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# The Omen in Nomen: An Exemplary Dictionary of Legal Names

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# THE OMEN IN NOMEN: AN EXEMPLARY DICTIONARY OF LEGAL NAMES

Peter Goodrich\*

## INTRODUCTION

The realization of the significance of legal names dawns slowly and somewhat incidentally. When first studying common law, it seemed a curiosity that the fifteenth century author and judge who wrote the foundational three volume treatise on the intricacies of property law, *Tenures*, was named Littleton, and that the name meant “small enclosure or small holding.”<sup>1</sup> It seemed amusing and coincidental that one of the earliest and most inventive of the sages of common law was named Coke—originally spelled and pronounced Cook—and that he had indeed been the great chef or inventor and mythologist of a distinctly English legal tradition. It was in many respects remarkable that the promulgator of the *Corpus Iuris Civilis*, the foundational text of Western law, was named Justinian, from *Justus* meaning Justice, a name itself derived from *jus* meaning law. Back then it was a distant premonition but even so it seemed as if, more often than could be mere coincidence, the names of great jurists augured the events or were prescient of the lives that followed upon the nomination.

The foreboding or omen in nomen is not simply an archaism. Jumping to the contemporary, which in legal terms of course means the last one hundred or so years, it would seem that Christopher Columbus Langdell was destined to discover the case

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<sup>1</sup> Where names are noted, the relevant biographical and bibliographical information can be found in the *Dictionary* and so is not repeated here.

method that came to define modern American legal education.<sup>2</sup> By the same token, it has to be more than coincidence that the most successful of contemporary law school Deans, a Catholic moralist and legal scholar who presided over the meteoric rise of New York University School of Law should be named Sexton, meaning church warden, the steward of the sacred vessels and vestments, namely the status of the congregation or school. Sexton is almost a synonym for Dean, which after all itself refers historically to a Church office holder who tends to a grouping of parishes and exercises a function of special care and inspection. To this we must add the various possible phonetic plays upon Sexton and sex, as most obviously, making the law school desirable—erotic, sexy. Sexton lived up to his name.<sup>3</sup>

Again, should it surprise us that the plaintiff in a losing cause of action for compensation for the upkeep of a horse that did not belong to him should be named Bailey, the phonetic equivalent of bailee, meaning gratuitous holder of someone else's chattels or things?<sup>4</sup> In *Bailey v. West*, the horse had "gone West" in the sense that the defendant purchaser renounced all interest in it, and sent it back to the seller who in turn refused delivery. Bailey was an intermediary who stabled the horse for several years without request and without compensation was nominally destined to lose.<sup>5</sup> The Court obliged by holding Bailey to be a bailee, in modern argot a volunteer, a gratuitous undertaker of an obligation.<sup>6</sup> Again, and finally, could either poet or novelist improve upon the

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<sup>2</sup> Christopher Columbus Langdell [1826-1906] was the Dean (originally Secretary) of Harvard Law School from 1870-95. Langdell initiated the case method of legal instruction, and was responsible for developing the office of the Dean into a position of dominance. The success of his program led to what has been called the "Harvardization" of American law schools. See, e.g., ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s*, at 345-50 (1983).

<sup>3</sup> QUINTILIAN, *INSTITUTIO ORATORIA* V.x.30 (H.E. Butler trans., 1922), takes the view that the name is only a primary source of argument in cases where the name is honorific or was given for some special reason—such as by virtue of trade or profession, a great deed or simple topography. M.T. CICERO, *TOPICA* 35 (T.E. Page et al. eds. & H.M. Hubbell trans., 1949) takes the stronger view that "many arguments are drawn from notation (etymology). This is what is meant when an argument is elicited from the history of a name" (*ex vi nominis argumentum elicitur*). It is the latter position which is advocated here.

<sup>4</sup> See *Bailey v. West*, 249 A.2d 414 (R.I. 1969).

<sup>5</sup> *Id.* at 415.

<sup>6</sup> Under Roman law the bailment (*commodatum*) must be free. JUSTINIAN'S *INSTITUTES* 3.14.2 (Peter Birks & Grant McLeod trans., 1987). Similarly, in early common law, in the absence of an *assumpsit* or contract of debt, the bailment is gratuitous or *nudum pactum*. The bailee cannot charge but must return the chattel for proprietary reasons. See A.W.B. SIMPSON, *A HISTORY OF THE COMMON LAW OF CONTRACT: THE RISE OF THE ACTION OF ASSUMPSIT* 267 (1975) (discussing a 1527 King's Bench case); see also D.J. IBBETSON, *A HISTORICAL INTRODUCTION TO THE LAW OF OBLIGATIONS* 34-35 (1999).

name of the case which has traditionally been taken as authority in English law for the proposition that an engagement ring cannot be recovered in the event of the marriage not taking place. In the case of *Zamet v Hyman*<sup>7</sup> it was Hyman—phonetically of course hymen—who successfully argued that the ring could be kept, that the gift was intact and that the promise should not be broken.<sup>8</sup>

While it may sound strange to contemporary ears, the attribution of causes to names has a venerable history in both philology and law. The roots or derivations of the name have traditionally been taken to bear considerable importance as denominations of character and quality. In nominalist terms, a name is the sign of a difference and its attribution is the result of convention or of the original legislative act of naming. Thus, according to one extreme version of legal nominalism propounded in an early common law treatise on legal logic, a mid-sixteenth century work entitled *The Rule of Reason*: “[H]e is half hanged, that has an evil name,” as for example someone ill-fatedly called Pope during the English Reformation.<sup>9</sup> In the spirit of attention to the meaning of names and to the marriage of the sign to that which it notes, the present *Dictionary* is devoted to elaborating the legal and political significances of juristic names. In Part I, the legal history of names and naming is briefly outlined. In Part II, the code or principles underlying the formulation of dictionary entries are set out. *The Exemplary Dictionary of Legal Names* then ensues, followed in Part IV by a cumulative statement of the principles that can be derived from the nominations.

## I. THE LAW OF NAMES

In that it is my intention to provide a dictionary of practical import and use, I will refrain from offering a lengthy tract on the philosophy of nominal essences or the linguistics of reference. I will restrict my remarks on the legal history of names in the main to the more common observations of forensic rhetoricians and other jurists concerned with the logic or method of law. Whatever sources one starts from, the study of names is a branch of etymology, the excavation of the origin and connotations of words.

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<sup>7</sup> *Zamet v Hyman* [1961] 3 All E.R. 933. *Zamet*, appropriately enough, from the Hebrew *Tzamaret*, meaning tree top.

<sup>8</sup> *Id.* at 942.

<sup>9</sup> THOMAS WILSON, *THE RULE OF REASON, CONTAINING THE ART OF LOGIQUE*, at sig 48v (London, 1553). Wilson goes on to argue that the name is in essence a metaphor for the thing designated or denominated.

The name is in this signification a sign that represents or symbolizes the qualities of its first bearers. A knowledge of names was closely aligned to codes of honor and the hierarchies of genealogy or lineage and thus to law. The *omina* in *nomina* is precisely the past in the present, the body subject to the law of its calling or name.<sup>10</sup>

To begin with the word name or *nomen* itself, the root is the Latin verb *nosco* meaning "to know." To name, as in to nominate or to denominate, means to assign a meaning, to predicate an understanding or interpretation of the subject that bears the name. The name is here a title and a mark of honor, a point which is frequently iterated by noting that the words name and nobility share a root in the verb *nosco*. The contrary of the honor of nomenclature or name is thus ignominy or loss of name and status, which in Roman law was referred to as *damnatio memoriae* or silencing of the name.<sup>11</sup> In either case, to borrow from Plato in the *Cratylus*, the name is conceived of as an act of legislation.<sup>12</sup> The name has a meaning by convention or law, a point that starts off the *Cratylus* with a discussion of the significance of the name Hermogenes as having its roots in Hermes, the name of the Greek God of speech and interpretation.<sup>13</sup> Similarly, though in a contrary form, Aristotle in the *Rhetoric* plays upon names as a topic of arguments, and famously uses the example of the tyrant Draco, an early lawgiver whose fame derived from a code of laws that punished every crime, however minor, by death. Aristotle observes that his laws "are not the laws of a man but of a dragon—they are so cruel."<sup>14</sup> In other words, it was fated that someone whose name means dragon would produce profoundly cruel and inhuman laws. More playfully, the Renaissance jurist Agrippa starts out his satirical treatise *Of the Vanitie and Uncertaintie of Artes and Sciences* by opining defensively that the "loowsie Grammarians will make a stirre, and with their *Etymologies* vppon

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<sup>10</sup> Igor Stramignoni, *At the Margins of the History of English Law: the institutional, the socio-political, and the 'blotted out'*, 22 *LEGAL STUD.* 420, 438 (2002). "Rather, what one would aim to do, in uncovering such history, would be to walk back towards the *incipit* of (non-historical) time in order to bring out the inauguration, on each occasion, of the *juridification* of the ordinary—to begin with, how people and things and events came to be given legal names." *Id.*

<sup>11</sup> For a discussion of *damnatio memoriae*, see PIERRE LEGENDRE, *LE DÉSIR POLITIQUE DE DIEU: ÉTUDE SUR LES MONTAGES DE L'ÉTAT ET DU DROIT* 232-34 (1988).

<sup>12</sup> PLATO, *CRATYLUS*, reprinted in *THE COLLECTED DIALOGUES OF PLATO INCLUDING THE LETTERS* 421 (Edith Hamilton & Huntington Cairns eds., Benjamin Jowett trans., 1963).

<sup>13</sup> *Id.* at 426-27, lines 384c-d, 408a-b.

<sup>14</sup> ARISTOTLE, *THE RHETORIC OF ARISTOTLE* 1400 B (Edward Meredith Cope ed., Cambridge Univ. Press 1877).

*Agrippa* will geue me a goutie name."<sup>15</sup>

Whether the name represented the truth or in satirical form the contrary of the subject named, nomination played a primary role in the theory of meaning and in the practice of law. The name was a law, both in the sense of Plato's fictive history of language in which it was the product of a legislative act, and in the sense of being itself a representation of a meaning or truth that had to be followed. In one obscure gloss on the *Digest*, attributed to Accursius, the name is said to inhere in or stick to a man's bones: *nomina, quae ossibus hominum inhaerent*.<sup>16</sup> The corporeal and the incorporeal are bound together in the name and the rationality or reason of their combination is ideally captured through nomination. Whatever the linguistic roots of this notion of etymology it serves to illustrate the key theme that the name is a bond, an obligation or contract with the past, as well as a prediction of future behavior.

While it may currently be popular to ignore the Latin sources of common law, it is worth staying briefly with the *Digest* and its various interpreters. The classical compilation begins with the issue of names and specifically with the question: "from whence does the name of the law descend?"<sup>17</sup> One translation of that question is that the law descends precisely from names and it is the law of names that guarantees the places of subjectivity and the social roles that the subject can enter. The name is here the guarantee or law of the subject and the power of naming or latterly interpreting names and thence words was precisely the power and the art of the lawyer. By the same token, the practice of law was the interpretation of words of which names were the exemplum or primary form. The study of law was defined, amongst other things, as the science of the meaning of words and as one Renaissance jurist put it, "without agreement as to what names designate there could be no discussion."<sup>18</sup> The power of law was thus not simply

<sup>15</sup> HENRY CORNELIUS AGRIPPA, OF THE VANITE AND VNCERTAINTIE OF ARTES AND SCIENCES 6 (Catherine M. Dunn ed., Northridge: California State University Press 1974) (1569). One root of Agrippa is undoubtedly the Latin *gutta* from which gout or gowty derive. The more obvious root is the French *grippe*, meaning seized or gripped by, from which we derive the modern flu or influenza. In either case, Agrippa—*ad* or *to*, and *grippe* or *gutta*—would suggest, in one interpretation at least, a propensity toward the illness or disposition named.

<sup>16</sup> The gloss is taken from CORPUS IURIS CIVILIS COMMENTARIIS ACCURSII D 44.7.3 (1627), but can be pursued more easily via the erudite recapitulation in Erich Genzmer, *Nomina Ossibus Inhaerent*, in 1 MÉLANGES PHILIPPE MEYLAN, at 159 (1963).

<sup>17</sup> *Digest* 1.1.1.1 *unde nomen iuris descendat*. Elaborated upon in PIERRE LEGENDRE, L'EMPIRE DE LA VÉRITÉ 51 (1983).

<sup>18</sup> GIRALOMO CAGNOLI, COMMENTARII DE REGULIS IURIS 783 (Lyon: n.p. 1593) (1576). This work is discussed in IAN MACLEAN, INTERPRETATION AND MEANING IN THE RENAISSANCE: THE CASE OF LAW (1992) (discussing the philosophy of

that of interpreting what Coke called the *vocabula artis* of legal terms,<sup>19</sup> it was also the manifestation of the prior power of naming, which the juristic tradition captures in the term jurisdiction or law (*iuris*) of speech (*dictio*).

If the name inheres in the bones, it is a sign not simply of knowledge and nobility but of the viscera of honor and degree, of blood and lineage. It is in this sense, according to Sir John Ferne, a barrister of the Inner Temple who authored an early common law systematization of the law of arms and ensigns, that names were to be understood as meanings borrowed from "some quality, or action exhibited, by the first parent."<sup>20</sup> He goes on to expand upon this theme, suggesting that:

commonly was this regard always duly observed, that names were given, to every man most apt for the explaining of his estate, life, conditions, qualities or personage. And therefore, amongst the learned Heralds and armorists . . . is this rule observed: that *a nominibus ad arma, sequuntur argumenta*. That is: reasons or arguments, taken from the names of men, do consequently follow, to their arms.<sup>21</sup>

He opines finally that "names were invented to know men by them."<sup>22</sup> The phonetic coincidence that "know men" and "nomen" are identical, that the sentence forms a species of epistemological *onomatopoeia* simply requires noting.

Ferne's theory of names is genealogical in that it depends upon lines of descent, antiquity and the proofs of time. The doctrine of names dictated that all names ideally signified "the first ancestor to have been either of the like authority, office or dignity . . . or possessed of the same possessions, and places, whereof they were denominate."<sup>23</sup> In this doctrine, etymology was the study of the meaning of names as the sign or figure of a prior sense. The Ramistic rules of method, shared by both the logics and the rhetorics of early common law, dictated that the origin of the name or word was the source of its meaning and the index of its truth. The central text of the reception of the *Corpus Iuris*, book 50, appropriately titled on the meaning of words (*de*

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interpretation that emerges from the Renaissance reception of these Roman fragments and maxims).

<sup>19</sup> 1 SIR EDWARD COKE, THE FIRST PART OF THE INSTITUTES OF THE LAWS OF ENGLAND 6R (Garland Publ'g 1979) (1628).

<sup>20</sup> SIR JOHN FERNE, THE BLAZON OF GENTRIE 224 (London, John Winder 1586). For a discussion, see PETER GOODRICH, LANGUAGES OF LAW FROM LOGICS OF MEMORY TO NOMADIC MASKS 111-48 (1990) (discussing "legal writing systems").

<sup>21</sup> FERNE, *supra* note 20, at 225.

<sup>22</sup> *Id.* See also JOHN GUILLIM, A DISPLAY OF HERALDRY: MANIFESTING A MORE EASY ACCESS TO THE KNOWLEDGE THEREOF 3R-V (London, Roycroft 1679) (1610).

<sup>23</sup> FERNE, *supra* note 20, at 227.



*verborum significatione*), explicitly states "that by the designation 'name' the thing is meant."<sup>24</sup> The common law tradition took up this principle of nomination in multiple ways from rules relating to the *litterae* or words of the text to principles of logic and the rhetoric of their presentation.

Logic and law were both borrowed from the French during the Renaissance and with respect to logic that meant the critical scholasticism of Petrus Ramus.<sup>25</sup> The key work was the *Logic* and we there find the discussion of "notation or etymology" to be concerned precisely with names and what they represent: "for words are nothing else but notes of matters signified."<sup>26</sup> In the language of logic, the name was the genus of which words were the species. In proof of this conception, Ramus goes on to state:

The Hebrews used to give their sons and their daughters names which might ever put them in remembrance of some point of religion. . . . The Greeks did use the same . . . [as] Philotheus which is lover of God; Demosthenes, the strength of the people . . . , [though] an enemy of Demosthenes would argue that he should not be so named but rather *Demovorus*, devourer of the people. . . . Physicians also give names to their herbs after the names of their inventors.<sup>27</sup>

The name was the signifier of the thing and as in logic so in law it was the knowledge of names that constituted the professional learning of the lawyer.

The *Logike* of Ramus was translated fairly directly into common law, the exemplary work being that of Abraham Fraunce who wrote the first logic for lawyers and was doing no more than following contemporary tradition in arguing that: "notation or etymologie, is the interpretation of the word. For words be notes of things, and of all words eyther derivative or compound, you may yielde some reason fet [made] from the first arguments, if the notation be well made."<sup>28</sup> Fraunce follows this statement of first

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<sup>24</sup> THE DIGEST OF JUSTINIAN 528-34, at 50.16.4 (T. Mommsen et al. eds., 1985) (Paulus, *Nominis appellatione rem significari*).

<sup>25</sup> On the influence of Ramus, see Peter Goodrich, *Ars Bablativa: Ramism, Rhetoric, and the Genealogy of English Jurisprudence*, in *LEGAL HERMENEUTICS: HISTORY, THEORY, AND PRACTICE* (Greg Leyh ed., 1990).

<sup>26</sup> PETRUS RAMUS MARTYR, *THE LOGIC OF THE MOST EXCELLENT PHILOSOPHER* 51 (London, Thomas Vautrollier 1574).

<sup>27</sup> *Id.* at 52-53.

<sup>28</sup> ABRAHAM FRAUNCE, *THE LAWIERS LOGIKE, EXEMPLIFYING THE PRAECEPTS OF LOGIKE BY THE PRACTISE OF THE COMMON LAWE* 51 (London, William How 1588). The sources and uses of this concept of etymology are usefully listed in ERNST CURTIUS, *EUROPEAN LITERATURE AND THE LATIN MIDDLE AGES 495-500* (Willard R. Trask trans., 1973) (1948). For Cicero etymology was called notation, though for Quintilian the literal rendering should be veriloquium (true speech) or origination. See QUINTILIAN, *supra* note 3, Book I vi, at 28-29.



principles with a lengthy series of illustrations of names, including the Aristotelian example of Draco's laws, and concludes not simply that names define the origin of words but that the best arguments are drawn from those origins. After presenting a lengthy series of illustrative etymologies, Fraunce concludes by castigating his contemporaries at the Inns of Court and stating:

I have purposely inserted a number of notations, for that I would make it plain, how the notion of the thing is oftentimes expressed by the notation of the word, contrary to the preiudicate opinion of some seely penmen, and illogical lawyers, who thinke it a fruiteles poynt of superfluous curiositie, to understand the words of a mans own profession.<sup>29</sup>

The root of the English word was most usually the Latin, and the origin of the common law modes of reasoning was similarly most often the Roman code. In this fashion, the first dictionary of English simply listed rhyming transliterations of the Latin,<sup>30</sup> and the early law dictionaries borrowed their title from Book 50 of the *Digest* and listed the origin of the terms of the law by reference to their derivations in Latin, French, Saxon, Norse and Old or Middle English.<sup>31</sup> Names were the notes of things in logic and in law, and interpretation best started from the source or root of the name, such providing the most fitting and the most persuasive argument. To which it remains only to add that the arguments drawn (or technically, invented) from names could be made either pro or contra—for or against—the original meaning. The name was rhetorically a figure, a metaphor or metonymy of its root and it could be used etymologically, as also ironically, humorously, or incorrectly as the occasion or the cause demanded. In the logic of antitheses or errors (*elenchs*) Agrippa would mean prone to gout, Hermogenes was a poor speaker, Demosthenes a devourer of the people; or in the common law tradition, little John was so named because he was huge, and, according to Fraunce, "a Woman is a woe man, because she worketh a man woe."<sup>32</sup>

<sup>29</sup> FRAUNCE, *supra* note 28, at 56. See also SIR JOHN DODERIDGE, THE ENGLISH LAWYER DESCRIBING A METHOD FOR THE MANAGING OF THE LAWS OF THIS LAND 66 (Prof. Books 1980) (1631) (providing a comparable statement of the rules of the English legal method: "*definitio nominis est qua vocis significatio explicatur*").

<sup>30</sup> PETER LEVINS, MANIPULUS VOCABULORUM: A DICTIONARY OF ENGLISH AND LATIN WORDS (Camden Soc'y 1867) (1570).

<sup>31</sup> Most notably, see JOHN COWELL, THE INTERPRETER OR BOOK CONTAINING THE SIGNIFICATION OF WORDS (Cambridge, Legat 1607). Cowell was a civilian but also one of the first systematisers of common law. See also JOHN RASTELL, AN EXPOSITION OF CERTAIN DIFFICULT AND OBSCURE WORDS, AND THE TERMS OF THE LAWS OF THIS REALM (London, Stationers Co. 1615) (1527).

<sup>32</sup> FRAUNCE, *supra* note 28, at 56.

## II. CODE

According to Montaigne, no man should be called happy until after he is dead.<sup>33</sup> The same logic would suggest that no name is secure until its bearer is deceased. The living can always still bring glory, infamy, or simply a change of significance to their nomination. It is for this reason that the common law judiciary historically favored citing only dead authors and one of the only other dictionaries of common law names, the *Biographical Dictionary of the Common Law*, begins by announcing that due to the problems of selection, "[n]o living persons have been included."<sup>34</sup> The present *Dictionary* takes a different, more optimistic position and favors the living but does not exclude the dead. In that its purpose is practical rather than antiquarian, the names of the living make better objects of argument and interpretation, of polemic, humor, and extrapolation, than do the dead whom the living will after all join soon enough. In the goodness of time, this *Dictionary* will have been about the dead and it simply suffices to say that any inaccuracies that may be discovered can thus be attributed to the fact that the subjects, including of course the author, were still extant and therefore fallible and mutable at the time of writing.

The principle of inclusion, in line with the early juristic doctrine of names, is broadly that of distinction or of the mark of difference. In an epigrammatic sense, those who are included have lived up to their name, and inversely, those who do not live up to their name, fail to live up to their name and so are not included. The subjects selected for entry in the *Dictionary* have by celebrity or infamy, by dint of brilliant or egregious acts, indicated a passion or drive that not only distinguishes them and so renders them in some facet unique but also suggests an element of unconscious or corporeal motivation. Further, that the name inheres in the bones indicates in a pre-Freudian yet nonetheless structural manner that the subject incorporates and expresses a cause that is interior and yet greater than the merely individual. In this aspect the *Dictionary* has a normative ambition, which is that of resurrecting the polemical art of arguments *ad hominem* and, in a modern translation, *ad feminam*, which is to say, arguments predicated

<sup>33</sup> MICHEL DE MONTAIGNE, THE COMPLETE WORKS OF MONTAIGNE: ESSAYS, TRAVEL, JOURNAL, LETTERS 33 (Donald M. Frame trans., Stan. Univ. Press 1943) (1588).

<sup>34</sup> BIOGRAPHICAL DICTIONARY OF THE COMMON LAW, at v (A.W.B. Simpson ed., 1984).

upon the individual, and specifically upon their distinction and their name.

The use of the names of extant jurists, of the living, renders the process of selection a matter of some delicacy and not a little tact. It also means that the subjects of selection—granted that we rapidly forget the dead—are more numerous. It is for this reason that the *Dictionary* is exemplary, meaning that it uses examples or illustrations rather than making any attempt to be comprehensive. The exemplary is didactic and seeks not only to represent a thesis by way of examples but also thereby to illustrate the importance of names to arguments. In normative terms, such arguments drawn from names mix a variety of recognized legal genres. They address not only the critical appreciation of distinction and achievement, but also the humorous (*rem levem*) and the polemical. It is the predicate of the analyses which follow that it is both more honest and frequently more useful to acknowledge a substrate of juristic argument that is nominal or *ad hominem*. While such arguments may seem to belong more properly to the ceremonial or epideictic genre, they are also political and forensic, a feature of the *ad hominem* that should not in truth surprise lawyers who are forever concerned with questions of character and of motive, as well as with the singularity and hence intimacies of advocacy and representation.<sup>35</sup>

Each entry will be formulated according to an outward movement from the lexical to the semantic and thence to an interpretation. The first annotation will be phonetic and will offer a pronunciation of the name. Where relevant there will be a parenthetical listing of institutional affiliation and in those rare cases where date of birth and death are significant these will also be appended. This will be followed by the etymology or root meaning of the name, and where relevant of rhyming or phonetically equivalent words. Etymology is followed by genealogy, and historical uses of the name will be used to supplement their etymology by means of biographical and historical references. The forename or names will be analyzed where they are deemed significant—which is usually—and on occasion, computer spell check variants upon names, as for example Headgear for Heidegger, Jurassic for Jurist, will be included. Finally, a rhetorical figure will be attached to each

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<sup>35</sup> The tradition of juristic polemic and specifically the genres of apology and antirrhetic, of defence and denunciation, are discussed in Peter Goodrich, *Antirrhetic: Polemical Structures of Common Law Thought*, in *THE RHETORIC OF LAW* 57 (Austin Sarat & Thomas R. Kearns eds., 1994).

nomination as the emblem of its interpretation.<sup>36</sup> By way of illustration I will use my own name which for reasons of propriety does not appear in the *Dictionary*:

Goodrich, Peter. (Gud-ridge) is from the Old English *Godric*, composed of *god* meaning good and *ric* meaning power or rule. Peter is from *Petros* meaning rock and with well known biblical significance as the name of the first apostle and the foundation stone of the Christian Church.<sup>37</sup> The rhetorical figure of interpretation is *persiflage*, the inverter of the serious and the erudite pursuer of trifles. Fated to be a founder and good ruler, a theologian of the law. Biographically we find that Peter Goodrich was indeed a founder, and specifically was founding Dean of Birkbeck Law School in the University of London in 1992, a School which rapidly became one of the top five law schools in Britain. Phonetically, *gud-ridge* also suggests vision or seeing over the ridge, and hence a good interpreter. Amongst Goodrich's

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<sup>36</sup> To save the text from an inundation of unnecessary footnotes, I will here list the sources used for etymologies, word lists, and rhetorical figures. The roots of names have been pursued mainly through PATRICIA HANKS & FLAVIA HODGES, *A DICTIONARY OF SURNAMES* (1988); P.H. REANEY ET AL., *A DICTIONARY OF ENGLISH SURNAMES* (1995); ALFRED J. KOLATCH, *COMPLETE DICTIONARY OF ENGLISH AND HEBREW FIRST NAMES* (1984); J.W. FREEMAN, *DISCOVERING SURNAMES: THEIR ORIGINS AND MEANINGS* (3d ed. 2001); *THE OXFORD DICTIONARY OF ENGLISH ETYMOLOGY* (C.T. Onions ed., 1966). Other word lists used are THOMAS BLOUNT, *GLOSSOGRAPHIA, OR A DICTIONARY INTERPRETING ALL SUCH HARD WORDS* (London, 1656); J. H. BAXTER & CHARLES JOHNSON, *MEDIEVAL LATIN WORD LIST* (1934); ENTICK'S *NEW LATIN ENGLISH DICTIONARY* (William Crakelt ed., 1822). Lexical recourse has otherwise been to *THE OXFORD ENGLISH DICTIONARY* (J.A. Simpson & E.S.C. Weiner eds., 1989), and to *A LATIN DICTIONARY* (Charlton T. Lewis & Charles Short eds., 1975) (1879). On the historical provenance of names I have consulted primarily *THE DICTIONARY OF NATIONAL BIOGRAPHY: 1941-1950* (L.G. Wickham Legg & E.T. Williams eds., 1959). For rhetorical figures I have resorted primarily to GEORGE PUTTENHAM, *THE ART OF ENGLISH POESIE* (Gladys Doidge Willock & Alice Walker eds., Cambridge Univ. Press 1936) (1589), and HENRY PEACHAM, *THE GARDEN OF ELOQUENCE CONTAINING THE FIGURES OF GRAMMER AND RHETORIC* (London, H. Jackson 1577). I have supplemented and updated these, as occasion has required, by reference to WILLARD R. ESPY, *THE GARDEN OF ELOQUENCE: A RHETORICAL BESTIARY* (1983); BRIAN VICKERS, *IN DEFENCE OF RHETORIC* (1988); *ENCYCLOPEDIA OF RHETORIC* (Thomas O. Sloane ed., 2001).

<sup>37</sup> It is only fair to observe that some commentators on this paper have taken a different view of the etymology of the name. One correspondent notes Old English roots of "gdd" and "riks" denoting aristocratic birth, high moral stature, and worldly wealth. Noting the irony of such a name for a radical lawyer—it is clearly a contrary—he remarks that "in modern usage, 'good and rich' may refer not to moral or material worth, but to a complex and layered irony, as in 'isn't it rich.'" Another correspondent notes, in a somewhat more direct vein that rich, and thence Richard, is familiarized as Dick. She continues: "Coincidentally, Peter is a saint but also means 'dick' in the current sexual vernacular. This is to say that the first name, the handle, undoes its sanctity as it rolls along, while the second name, the name of the father, virtually explodes or implodes by virtue of its insistence on abstraction and its suppression of the dick, the historical body, that props it up." Letters to Peter Goodrich (on file with author).

books are *Legal Discourse* and *Oedipus Lex*, both works which, together with the present *Dictionary*, suggest a facility with questions of interpretation and a comprehensive understanding of the origins and significances of legal names.<sup>38</sup>

### III. AN EXEMPLARY DICTIONARY OF LEGAL NAMES

Abel, Richard (Ay-bull) [UCLA] Abel from the Hebrew *Hevel* meaning breath, vigor, and figuratively vanity or worthlessness.<sup>39</sup> This latter connotation doubtless also derives from the biblical Abel, the son of Adam who was murdered by Cain, and whose name was used by various millenarian cults of suffering innocence in the Middle Ages. Richard from Old English *ric* meaning power and *hard* meaning hardy, brave, strong. Phonetically able in the sense of full of ability. Rhetorical figure *peristasis* or that of the contextualist. Destined to shine vigorously but also to be brilliant and unworldly and hence to suffer the pangs of innocence. Preordained to be a critic and chastiser of the legal academy for its intellectual want, for its laziness, and for its lack of ambition.<sup>40</sup> Highly successful scholar, a founder of the modern tradition of sociology of law and specifically focused upon the sociology of the legal profession. Like most legal academics whose persona is intellectual or academic rather than vocational and professional, he is likely someone who is unhappily lodged in law school environments. Started his career at Yale but was refused tenure for his leftist or critical legal views. Author of numerous highly influential books on the legal profession around the world.<sup>41</sup> Nominally destined to follow closely upon the heels of the founder or Adamic figure and thence to be punished—literally or metaphorically—for reasons of jealousy or of narcissistic rivalry.

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<sup>38</sup> PETER GOODRICH, *LEGAL DISCOURSE: STUDIES IN LINGUISTICS, RHETORIC AND LEGAL ANALYSIS* (1987); PETER GOODRICH, *OEDIPUS LEX: PSYCHOANALYSIS, HISTORY, LAW* (1995).

<sup>39</sup> I note here, for no reason other than the circumstantial, that Abel is a recent family name, changed from Ablowitz in the post-war period. Here and throughout this *Dictionary* I have taken the view that analysis should attend to the name in usage and not to any such distraction as the original or proper or simply prior name. My justificatory argument in relation to this practice is obviously that the change of name is much better evidence of motivation than even the original. The changed name, like the synonym, is quite consciously an act of nomination.

<sup>40</sup> See, e.g., Richard L. Abel, *Evaluating Evaluations: How Should Law Schools Judge Teaching?*, 40 J. LEGAL EDUC. 407 (1990).

<sup>41</sup> See, e.g., RICHARD L. ABEL, *THE LEGAL PROFESSION IN ENGLAND AND WALES* (1988); *LAWYERS: A CRITICAL READER* (Richard L. Abel ed., 1997); RICHARD L. ABEL, *AMERICAN LAWYERS* (1989).

Preordained, in short, a purist who would boldly and thence critically study power and its legal manipulations.

Ackerman, Bruce (Ache-er-mun) [Yale] Etymologically from German *Acker* meaning field or agriculture (from which acre), and mediate from the English where *acer* was a status name under the feudal system referring to a bond tenant who was a ploughman for a manor—an acre man. Bruce is from the Old Norse for island in a swamp. In the Middle Ages it became a popular Scottish name, associated most famously with Robert the Bruce who defeated the English at Bannockburn in 1314. Rhetorical figure, *synecdoche* or part for whole, and which Puttenham terms the figure of quick conceit. Destined by name to work—to be a tenant—for long periods of time at one place, and to be much infused with questions of status and the hierarchies that it generates and also expresses. By inclination and nomination thus preordained to work on questions of territory, of land, nation, and constitutional law. An “acre-man” is in this sense, the oldest of senses, one who ploughs the territory, one who inscribes the tellurian laws—the *leges terrae*—of a common or local law. Author of *We the People*, a multi-volume theory of constitutional law; editor of a collection of essays on *Bush v Gore*.<sup>42</sup> Shares his forename both with Robert the Bruce and Bruce Willis, the actor made famous by the *Diehard* movies. A tendency thus to polemical heroism of a nationalistic ilk.

Balkin, Jack (Ball-king) [Yale] Etymologically from the French *Baud* meaning corpulent or rotund, and later bold and occasionally joyful. Jack, from the Hebrew *Jacob*, meaning held by the heel; and in its Anglicized form, a diminutive of John, meaning a saucy or paltry fellow, a sailor. Rhetorical figure *aposiopesis* or breaking off. Destined to be large, literally, which is to say physically, and metaphorically, which is to say spiritually. Preordained to open up new fields and then to balk or fall back. Balkin has gained a considerable influence and great career success through translating—some would say bowdlerizing or balkanizing—other disciplines and continental traditions into the domain of law. Has moved rapidly from one field to another, from literary theory, to semiotics, to political philosophy, to constitutional law, to virtual reality and back. Prolific author of law review articles including an article on *Deconstructive Practice and Legal Theory*, and of a book entitled *Cultural Software*.

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<sup>42</sup> BRUCE A. ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* (1991); *BUSH V. GORE: THE QUESTION OF LEGITIMACY* (Bruce Ackerman ed., 2002).



Shares his forename with "Jack of all trades."<sup>43</sup> As if in anticipation of the *Dictionary*, and in a rigorous attempt to exemplify his name, Balkin's most recent work is uncharacteristically direct and titled *The Laws of Change: I Ching and the Philosophy of Life*. Unrelated to positive law, this book addresses the constancy of flux in everyday life. It purports to offer a species of advice that lawyers have historically been most signally ill-equipped to provide, namely a coda for living well.<sup>44</sup>

Barron, Anne (Bare-ohn) [London School of Economics] From the Old French *baro* referring originally to service in the baronial household or used as a nickname for a peasant or servant who had ideas above their station. Alternate etymology from Old English *beorn* meaning young warrior, and the Germanic *beran* meaning bear. Anne from the Irish *Annach* meaning iniquity. Rhetorical figure *meiosis*, meaning mockery or diminution. Fated to fight against—ambivalently to admire—all orders of precedence and to rail against hierarchy as such. Whatever her motives—good or ill—preordained to criticism and, some might further infer, discontent. A feminist legal scholar and critical legal theorist, author of numerous articles attacking not only the hegemonic jurisprudence, but also feminism, postmodernism, critical legal studies, and on one occasion, me.<sup>45</sup> A powerful polemicist and a salient if barbed critic.

Berlant, Lauren (Bear-lon) [Chicago University, Department of English] From German *brillant* meaning diamond and thence the French *briller* to shine or glitter. Lauren from the Latin *laurus* meaning laurel tree. A name given in the Middle Ages to many minor saints, including hermits, martyrs, and abbots, perhaps because of a propensity for sitting under laurel trees. Rhetorical

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<sup>43</sup> J. M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743 (1986). For commentary on that piece, see the critique in Pierre Schlag, "Le Hors De Texte, C'est Moi": *The Politics of Form and the Domestication of Deconstruction*, 11 CARDOZO L. REV. 1631 (1990), and Peter Goodrich, *Europe in America: Grammatology, Legal Studies, and the Politics of Transmission*, 101 COLUM. L. REV. 2033 (1998). For approving liberal certification of the piece, see Neil MacCormick, *Reconstruction after Deconstruction: A Response to CLS*, 10 OXFORD J. LEGAL STUD. 539 (1990). See also J. M. BALKIN, *CULTURAL SOFTWARE: A THEORY OF IDEOLOGY* (1998).

<sup>44</sup> JACK M. BALKIN, *THE LAWS OF CHANGE; I CHING AND THE PHILOSOPHY OF LIFE* (2002).

<sup>45</sup> Anne Barron, *Legal Discourse and the Colonization of the Self in the Modern State*, in *POST-MODERN LAW: ENLIGHTENMENT, REVOLUTION AND THE DEATH OF MAN* 107 (Anthony Carty ed., 1990); Anne Barron, *Spectacular Jurisprudence*, 20 OXFORD J. LEGAL STUD. 30 (2000); Anne Barron, *Feminism, Aestheticism and the Limits of Law*, 8 FEMINIST LEGAL STUD. 275 (2000). My cryptic riposte to the last piece is contained in Peter Goodrich, *Barron's Complaint*, 9 FEMINIST LEGAL STUD. 149 (2001).



figure *climax* or the marching figure. Included here for her indelible influence upon interdisciplinary legal studies. Destined ineluctably to an academic and literary trajectory of brilliance. Preordained to scholarship that glistens between *topoi* and disciplines. One who shares her light with many, who exposes her soul under the laurel tree, part martyr, part leader. Author of an interview under the title "Loose Lips," suggesting a certain suffering for words used, for things said or done. Long-time editor of leading literary and cultural journal, *Critical Inquiry*. Coruscating proponent of the concepts of the personal archive and of the intimate public sphere.<sup>46</sup> Has written extensively on intimacy, on zoning, on "public sex." Author of a book with a marching title: *The Queen of America Goes to Washington City*.<sup>47</sup> As with any diamond, can be rough as a critic, or can cut to the quick.<sup>48</sup>

Bodenheimer, Edgar (Bohdin-high-ma) [University of California Davis, 1908-1991] From the Frisian *Bodo* to announce, and the Hebrew *chaim* meaning life. Edgar from the Old English *ead* meaning fortune and *gar* meaning spear. Rhetorical figure *anachinosis* or figure of the impartner, meaning someone who in pleading or persuading alerts the reader or judge to the nature of the adversary. Nominally fated to be a messenger of good fortune or proponent of life. Author of *Power, Law, and Society*, a treatise on the legal theory of Friedrich Nietzsche which concludes with the argument that an historical conspectus of the accumulated good and evil caused by law would necessarily conclude that law has done more good than ill.<sup>49</sup> Fortune's wheel favors law and Bodenheimer flung this good news to his contemporaries. Not much read since then.

Bottomley, Anne (Bo-tomb-li) [Kent Law School, England] From Old English *botm* meaning broad valley and *leah*, wood or clearing. Anne from the Hebrew *Chana* meaning "Gracious." Phonetically proximate to bottom, meaning foundation or

<sup>46</sup> Lauren Berlant, '68 or Something, 21 CRITICAL INQUIRY 124 (1994); Lauren Berlant, *Intimacy: A Special Issue*, in INTIMACY 86 (Lauren Berlant ed., 2000); Lauren Berlant & Michael Warner, *Sex in Public*, in INTIMACY 311 (Lauren Berlant ed., 2000).

<sup>47</sup> LAUREN BERLANT, THE QUEEN OF AMERICA GOES TO WASHINGTON CITY: ESSAYS ON SEX AND CITIZENSHIP (1997).

<sup>48</sup> Lauren Berlant, *Two Girls, Fat and Thin*, in REGARDING SEDGWICK: ESSAYS ON QUEER CULTURE AND CRITICAL THEORY (Stephen M. Barber & David Clark eds., 2002).

<sup>49</sup> EDGAR BODENHEIMER, POWER, LAW, AND SOCIETY: A STUDY OF THE WILL TO POWER AND THE WILL TO LAW (1973).

fundament. Rhetorical figure *gnome*, the director, sage sayer, or sentential. Destined to found and to explore foundations and to do so with great style and resilience. Preordained to be a founder who clears a path, explores and charts the bases of disciplines and the roots of academic style. A founder of the European critical legal studies movement, she also has considerable *gravitas* or presence within British feminist legal studies. She has written extensively on the process of law teaching and the politics of theory.<sup>50</sup> She is editor of an influential book series titled *Feminist Perspectives upon the Foundational Subjects of Law*.<sup>51</sup>

Bracton, Henry de (Brack-tun) [Judge and Writer, 1210-1268] From Old English *braech* meaning to break land, or plough for the first time. Henry, Germanic from *haim* meaning home and *ric* meaning power. Rhetorical figure *aetiologia* or giver of causes. Destined to be the first in his field, to make the first cut. In light of the forename Henry, clear that this initial tilling of the land would be local and legal. Author of *De legibus et consuetudinibus Angliae* (On the Laws and Customs of England) which Maitland described as "the flower and crown of English jurisprudence."<sup>52</sup> The treatise was the first attempt to provide an exposition of the whole of English law—the laws of the plough meaning local and inscribed laws and customs, the *leges terrae*—and stood alone in that regard for five centuries. Origins, and particularly legal origins, are always obscure and recent scholarship has thrown serious doubt upon whether Bracton was author of the *De legibus*. It was quite possibly a collective work which Bracton edited (redacted), and now, as regards authorship and legitimacy, must be placed within the domain of "time beyond the memory of man" or "time immemorial," a legal time that precedes authorship, books and all need of historical justification. In theology and law, antiquity triumphs over novelty, and the ultimate cause is the cause of causes, the fiction of the absolute or, in Bracton, the floral figure of a home and thence a domestic law originating before time and memory.<sup>53</sup>

<sup>50</sup> FEMINIST THEORY AND LEGAL STRATEGY (Anne Bottomley & Joanne Conaghan eds., 1993); Anne Bottomley, *Theory is a Process Not an End: A Feminist Approach to the Practice of Theory*, in FEMINIST PERSPECTIVES ON LAW & THEORY 25 (Janice Richardson & Ralph Sandland eds., 2000).

<sup>51</sup> See, e.g., FEMINIST PERSPECTIVES ON THE FOUNDATIONAL SUBJECTS OF LAW (Anne Bottomley et al. eds., 1996).

<sup>52</sup> THEODORE F. T. PLUCKNETT, CONCISE HISTORY OF THE COMMON LAW 258 (5th ed. 1948).

<sup>53</sup> On this theme, see JOHN FAVOUR, ANTIQUITY TRIUMPHING OVER NOVELTY (London, Richard Field 1619).

Cardozo, Benjamin (car-doza) [Author and Judge, 1830-1938] From the Latin *carduus* meaning thistle. Alternately from *cardinis* (genetive *cardo*) meaning door hinge. Benjamin from the Hebrew *Binyamin* meaning son of the south or of the right hand. Connotations of strength and of being the favorite. Rhetorical figure *paradigma* or resemblance by example. Destined to be a pivotal figure in law, a favorite or at least an exemplar. Preordained also that he will play an ambivalent role, that he will prick or needle, and so occupy a Janus like position in the development of the law. Author of *The Judicial Process* and of numerous pivotal judgments. Frequently relied upon intuition and upon what he termed "subconscious" elements of law that he would excavate and use. An agreement could be "instinct with an obligation"; the "the half truths of one generation [become] the whole truth of another."<sup>54</sup> Despite or perhaps because of his frequent recourse to intuition and the unconscious, he once wrote that "happiness is not my business."<sup>55</sup> Cardozo tends to be pronounced "cardoza," literally meaning "by opinion" or more strongly "by sleep" and hence suggests a propensity to "wing it" or to follow the unconscious. As the etymology of the name also suggests, such a propensity is as much a gift or endowment (*dos*) or honor (Medieval Latin *doxa*) as it is a surprise and potentially a weakness. Hence his pivotal role, that of the door or hinge through which new forms are glimpsed. In the second part of the twentieth century a Law School was named after him, suggesting by a reverse etymology that he was likely to be a teacher and author as well as a judge.

Collins, Hugh (Call-ins) [London School of Economics] From the Latin *colonia* meaning to colonize, or from the Gaelic *uilean* meaning nook or recess. Phonetically close to the French *collines*,

<sup>54</sup> *Wood v. Lucy, Lady Duff-Gordon*, 118 N.E. 214, 214 (N.Y. 1917). Justice Cardozo observed that "[a] promise may be lacking, and yet the whole writing may be 'instinct with obligation.'" *Id.* In *Allegheny College v. National Chautauqua County Bank*, 159 N.E. 173 (N.Y. 1927), Cardozo stated that "[v]ery likely, conceptions of public policy have shaped, more or less subconsciously, the rulings thus made." *Id.* at 175. In more substantive terms, in the same case, Cardozo puts forward a theory of the unconscious process: "The half truths of one generation tend at times to perpetuate themselves in the law as the whole truth of another, when constant repetition brings it about that qualifications, taken once for granted, are disregarded or forgotten." *Id.* at 174.

<sup>55</sup> Letter from Benjamin N. Cardozo to Elvira Solis (Feb. 15, 1933), *quoted in* Martin Seligman et al., *Why Lawyers are Unhappy*, 23 CARDOZO L. REV. 33 (2001). Cardozo states: "As to being happy, I fear that happiness isn't my line. Perhaps the happy days that Roosevelt promises will come to me along with others, but I fear that all trouble is in the disposition that was given to me at birth, and so far as I know, there is no necromancy in an act of Congress that can work a revolution there." *Id.* It hardly bears comment that Cardozo's morbid missive is directed towards someone called "solis," namely alone.

or hills. Hugh from *hug* meaning mind, heart, spirit. Rhetorical figure *prolepsis*, the passager or explainer. Destined to be a mental or psychic traveler and specifically to colonize ideas and subject areas in serial form. As a colonizer, preordained to pass through a diversity of contexts and conversations but to retain a recess or nook of origin and Englishness. In light of the phonetic proximity to hills, Collins is also likely to offer surveys or vistas, panoramic overviews of doctrines and disciplines. Started off writing on *Marxism and Law*; also wrote on the work of his teacher Roberto Unger; in doctrinal terms wrote on the theory of Contracts, Employment Law, and regulation.<sup>56</sup> Prolific and diverse output. A colonizer of the intellect, but also a contrary, an inward looking extrovert, a shy radical.

Clinton, William Jefferson (Clin-tun) [Disbarred attorney and former U.S. President] From the Old English *glinde* meaning fence, and *tun* meaning enclosure. William from the Old English *wil* meaning desire and helm meaning helmet or protection. Jefferson from *gala*, to sing, but also linked to the former president Jefferson. Rhetorical figure *epizeuxis*, the underlay or for Puttenham the cuckowspell, meaning the repetition of a single note. As Peacham puts it: "we are likely to use epizeuxis in moments of stress for lack of a quick synonym." Curious instance of a contrary, indeed of twice if not thrice contrary. In biblical terms a thing said thrice becomes its opposite (a lie) and here the etymology of William Jefferson Clinton would appear to be a compilation of contraries. Clinton means desire protected, lust fenced in, a song from within a cage or dovecote or some other safe space. Thus the etymology suggests someone cautious, reigned in, and above all appropriate or morally pigeon holed. Clinton was of course a champion of desire but neither the grounds of experience nor the protections of office could spare him the public exposure of his desires. He was fated to act out the contrary of his name.

Coke, Sir Edward (Cook) [Lord Chief Justice of England, 1552-1634] From the Latin *coquus*, an occupational name for a cook, a seller of cooked meats, or a keeper of an eating house. Sometimes confused with *Cock*, meaning one who struts proudly. Edward

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<sup>56</sup> HUGH COLLINS, *MARXISM AND LAW* (1982); HUGH COLLINS, *THE LAW OF CONTRACT* (1986); Hugh Collins, *Roberto Unger and the Critical Legal Studies Movement*, 14 J.L. & SOC'Y 387 (1987); HUGH COLLINS, *JUSTICE IN DISMISSAL: THE LAW OF TERMINATION IN EMPLOYMENT* (1992); HUGH COLLINS, *REGULATING CONTRACTS* (1999).

from the Old English *Eadward*, composed of *ead* meaning fortune and *weard* meaning guard. Rhetorical figure *catachresis*, misapplication or the abuser. It should be noted that catachresis refers also to "necessary metaphor," as in the "tongue" of a shoe, the "foot" of a hill. According to Du Marsais, it marks the founding role of rhetoric, by tracking changes in the meaning or use of words.<sup>57</sup> A doubly English name which fated its bearer not simply to protecting but to inventing and guarding the often fictional fortunes of common law as English law. Author of the *Institutes*, in two Parts, the first subtitled *Or a Commentary of Littleton, not the name of a lawyer only, but of the law itself*.<sup>58</sup> His mythologization of Littleton suffuses the *Institutes*, which indeed begins by declaring Littleton not simply the name of the law, but also by insisting that common lawyers owe to Littleton's *Tenures* what the civilians owe to Justinian. *The Second Part of the Institutes* addresses another mythical icon of common law, the *Magna Charta*, which he describes in the preface, in Latin but without any apparent irony, as *magnae chartae libertatum Angliae*, the great grant of the liberties of the English, and says it is equally named *communis libertas*, and *le chartre des franchises*, despite being little more than a deal struck between the King, the Church, and the nobility.<sup>59</sup> Coke continues to assert that "the best inheritance a subject has is the law of the realm."<sup>60</sup> Elsewhere he states with apparent sincerity that the common law was of such antiquity as to be traceable to Brutus the first King of England and goes on to expatiate upon the "greater antiquity" of common law "than any the constitutions or laws imperial of Roman Emperors."<sup>61</sup> Later in the *Reports*, it is King Arthur who signals the antiquity of common law.<sup>62</sup> Preordained to be the great eulogist of English law, Coke viewed common law as being so antique and mystical in power that historians could not refute it nor sovereigns reform it by legislation. Shares his name with America's most popular soda, Coke, "the real thing." In the case of the drink, the slogan is a contrary—Coke no longer contains

<sup>57</sup> M. DU MARSAIS, *DES TROPEs, OU DES DIFFÉRENS SENS DANS LEQUELS ON PEUT PRENDRE UN MEME MOT DANS UNE MEME LANGUE* (Paris, Chez J. Carez et Thomine 1775) (1730), treats *catachresis* as the primary figure because all rhetorical figures change meanings or place words in borrowed homes.

<sup>58</sup> COKE, *supra* note 19.

<sup>59</sup> EDWARD COKE, *THE SECOND PART OF THE INSTITUTES OF THE LAWS OF ENGLAND* (1681) proeme.

<sup>60</sup> *Id.*

<sup>61</sup> 2 EDWARD COKE, *REPORTS OF SIR EDWARD COKE* Part III, at B 3 b (George Wilson trans., 1777).

<sup>62</sup> 5 EDWARD COKE, *REPORTS OF SIR EDWARD COKE* Part IX, at C 2 a (George Wilson trans., 1777).

cocaine—but in the case of Sir Edward, he remains the real thing, the authentic mystic or paradoxical chef of the native common law.

Conaghan, Joanne (Kona-han) [Kent Law School, England] From Old Irish diminutive for chief or leader. Also refers historically to a Scottish family that rose in status from vassal to owner of the manor. Joanne from the Hebrew *Yochanan* meaning "God is gracious." Rhetorical figure *antitheton*, that of the contrary argument or polemicist (as in Joanna *ad oppositum*). Fated to be a leader, to rise in status, and to do so in good grace even if in hard times. Author of numerous articles on labor and employment law from leftist and feminist perspectives and a theorist of feminist legal studies.<sup>63</sup> Editor in Chief of the influential journal *Feminist Legal Studies*. Recently promoted to a full Professorship in Law which, as Robert Louis Stevenson once remarked, is a sign of rare achievement and distinction. In sum, she has risen in status, remained true to her roots, and become a leader within feminist legal studies.

Cornell, Drucilla (Kaw-nell) [Rutgers University] From the French *Corneille*, probably derived from *cornu* or horn and hence prattling person. Drucilla from the Saxon *drog* meaning ghost or phantom, and the Old English *dru* meaning favorite or lover and hence vigorous, lively, and strong. Rhetorical figure *energeia* (sometimes *hypotyposis*) or lively speech. Fated to be forceful, loud, and prolific in argument yet also prone, like a spirit or spirits, to appear and disappear. Preordained to significant intellectual stature, to radical insight as well as to drama, one might even say to kernel and comedy. Path-breaking scholar and author of several important and widely read works on feminist legal theory, including *Beyond Accommodation*, and *The Imaginary Domain*.<sup>64</sup> One of the first feminists to join a Joycean sense of language and literature to the analysis of the legal form. Also remarkable for paying legal attention to desire and to imagination. A dominant figure and leader within her field. Shares her surname with the

<sup>63</sup> Joanne Conaghan & Louisa Chudleigh, *Women in Confinement: Can Labour Law Deliver the Goods?*, 14 J.L. & SOC'Y 133 (1987); Joanne Conaghan, *Wishful Thinking or Bad Faith: A Feminist Encounter with Duncan Kennedy's Critique of Adjudication*, 22 CARDOZO L. REV. 721 (2001); Joanne Conaghan, *Reassessing the Feminist Theoretical Project in Law*, 27 J.L. & SOC'Y 351 (2000).

<sup>64</sup> DRUCILLA CORNELL, *BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW* (1990); DRUCILLA CORNELL, *THE PHILOSOPHY OF THE LIMIT* (1992); DRUCILLA CORNELL, *THE IMAGINARY DOMAIN: ABORTION, PORNOGRAPHY & SEXUAL HARASSMENT* (1995); Drucilla Cornell, *What Takes Place in the Dark*, 4 DIFFERENCES: J. FEMINIST CULTURAL STUD. 45 (1992).



French baroque dramatist Pierre Corneille and hence a tendency to drama and specifically to tragedy.

Douzinass, Costas (Doo-see-nas) [University of London, Birkbeck Law School] Douzinass from the Latin *dulcis* (Old French *dolz*), in the medieval era often a feminine name. Costas, an abbreviation of Constantine, from the Latin *constans* meaning invariable. Linked historically to the Emperor Constantine, the first Christian ruler of the Roman Empire in whose honor Byzantium was renamed Constantinople. Rhetorical figure *hyperbole* (Latin *dementiens*) or excess, though sometimes and more specifically termed *bomphibologia* or pompous speech. Fated by etymology and name to constancy of political purpose as well as to uniformity of character and uniformly grandiose aspirations. Preordained an empire builder and seeker after power for ideological reasons. Like Constantine whose nomination he carries, his political projects are both massive and fantasmatic. Thus as inclined to literature and fiction as to law properly speaking.<sup>65</sup> Characteristically co-author of the first work on *Postmodern Jurisprudence* in which legal thought from "the classical polis to the postmodern megapolis" is recast and a new discipline of legal theory announced.<sup>66</sup> His only sole authored work expands the claim to postmodern empire and declares both the "triumph of human rights on the world stage" and the "end of human rights."<sup>67</sup> As the ambivalence of the etymological gender of names derived from *dulcis* suggests, destined to an ambiguous relation to feminism, queer theory and gender studies.<sup>68</sup> Tendency also by nomination to sweetness of tooth meaning hedonism and alcohol. Mainly, however, a pyrrhic universalist. His most comprehensive position statement on human rights advocates a universal right for "the other." Not clear what this means save that it offers a highly abstract universal—"the other"—as the principle or payoff of human rights. In practice the subject saved or protected by such rights remains an evanescent or bombastic universal, a projection or pontification rather than a person.

<sup>65</sup> A maverick in this sense, see the wonderful final chapter to COSTAS DOUZINASS ET AL., *POSTMODERN JURISPRUDENCE: THE LAW OF TEXT IN THE TEXTS OF LAW* (1991), where a desire for literature and for fame overtakes the juristic text in a beautifully satirical ending to the book.

<sup>66</sup> *Id.* at 3.

<sup>67</sup> COSTAS DOUZINASS, *THE END OF HUMAN RIGHTS: CRITICAL LEGAL THOUGHT AT THE TURN OF THE CENTURY* (2000).

<sup>68</sup> Costas Douzinass, *The End(s) of Human Rights*, 26 MELB. U. L. REV. (forthcoming 2003).



Dworkin, Ronald (Dee-war-king) [NYU, and University College, London] Etymologically from *Dvorin*, from the Hebrew *Devorah* meaning prophetess and judge. Ronald, from *Reynold*, a Germanic first name composed of *ragin* meaning counsel and *wald* meaning rule. The figure of interpretation is *epizeuxis* or repetition for emphasis. The interpretation is that Dworkin, who is one of the most prolifically published jurists in the United States, and author, amongst numerous other books and articles, of *Law's Empire* is both continuously working and endlessly offering counsel and rule.<sup>69</sup> Dworkin, whose theory of law depends upon the notion of moral principles underpinning and legitimating the seeming idiosyncrasy or arbitrariness of legal judgments, is both a reformer and a prophet of law's future. The name destined Dworkin to law and specifically to the governance of law, to legal philosophy or expatiation upon the law of laws. Not yet, and unlikely to be appointed to the Bench, Dworkin is a judge not of cases but of the merits of laws and in this sense he is properly a prophet or seer, a visionary of law. He shares his forename with Ronald Reagan, thespian and politician and so is fittingly described as both dramatist and judge, hedonist and reformer, populist and artist who argues prophetically in his book *Life's Dominion*, that both life and death should be creative acts.<sup>70</sup>

Duxbury, Neil (Ducks-berry) [University of Manchester, England] A place name of uncertain etymology. In literary geography most notably a reference to the Castle of Dux where the exiled Giacomo Casanova, Chevalier de Seignalt, wrote his memoirs in the face of the indignities of ill-treatment from the Duke's servants and as "the only remedy to keep from going mad or dying of grief."<sup>71</sup> Neil from the Old Irish *Niall* meaning champion, alternately or latterly from the Latin *nihil*, meaning nothing, as in nihilist. Rhetorical figure *topothesia* or description of imagined places. Named after a place, the subject is likely to be bounded or tied to a place and to be cautious of divergence or difference. Preordained to be a champion without a cause, a successful nihilist and thus ideally suited for scholarship, for archives and law and economics. Author of *Patterns of American Jurisprudence*, a prize winning work that reconstructs the arcana of faculty disputes and

<sup>69</sup> RONALD DWORKIN, *LAW'S EMPIRE* (1986). For a cognate interpretation of the work, see Allan C. Hutchinson, *Indiana Dworkin and Law's Empire*, 96 YALE L.J. 637 (1987).

<sup>70</sup> RONALD DWORKIN, *LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM* (1993).

<sup>71</sup> GIACOMO CASANOVA, *HISTORY OF MY LIFE I*, at 9 (Willard R. Trask trans., 1966) (1960).

committee meetings within twentieth century US law schools.<sup>72</sup> Also author of a short work on *Jurists and Judges* which interestingly studies the unseen and mainly imagined influence of the former upon the latter.<sup>73</sup> Has spent almost his entire career at the University of Manchester, a provincial and sometimes troubled English Law School.

Fischl, Michael ([o]fficial) [Miami Law School] From the Hebrew *fisch*, meaning fish and referring latterly to one who spreads or disseminates to many. In the Book of Jonah the great fish was a mode of transport and transmission. Michael from Hebrew *Micha-el* meaning "who is like God." In Biblical terms the archangel Michael was the conqueror of Satan, and so a warrior for the good. Rhetorical figure *paramologia* or figure of admission, a figure that marks the persuasive orator who admits the arguments of the opponent before they are made and then uses such admission to advantage. Destined to rhetorical success, particularly as a teacher and disseminator of ethics in law. A leading critical legal scholar preordained to subtle political and rhetorical modes of advocacy. Most famously author of "*The Question that Killed Critical Legal Studies*," an archetypically paramological piece, which by exaggerating reports of the death of the movement, helped breathe new life into it.<sup>74</sup> A brilliant and gracious host of many critical legal symposia dedicated to honoring the work of prominent critical scholars as well as, more occasionally, to admitting their weaknesses.<sup>75</sup>

Fraunce, Abraham (Frawn—ss) [Philosopher, Poet, and Lawyer, 1587-1633] From the Latin *Franciscus* meaning French man. Abraham from the Hebrew *av hamon goyim* or father of a multitude of nations. Rhetorical figure *antistrophe* or turning away from one sort of speech to another. Destined by name to be a reformer of law or founder of new schools of legal thought. Preordained to introduce French theory into English law, which is precisely what he did in *The Lawiers Logike*. Trained at Cambridge University in philosophy and specifically in the reformist philosophy of Ramism that was then sweeping Europe, Fraunce's work subjected common law to the precepts of the

<sup>72</sup> NEIL DUXBURY, PATTERNS OF AMERICAN JURISPRUDENCE (1995).

<sup>73</sup> NEIL DUXBURY, JURISTS AND JUDGES: AN ESSAY ON INFLUENCE (2001).

<sup>74</sup> Michael Fischl, *The Question That Killed Critical Legal Studies*, 17 LAW & SOC. INQUIRY 779 (1992).

<sup>75</sup> His symposium on the work of Duncan Kennedy was published in the *Cardozo Law Review*, 2001. 22 CARDOZO L. REV. 773 (2001). His symposium on the work of Pierre Schlag will appear in 57 MIAMI L. REV. (forthcoming 2003).

topical French scholasticism of Petrus Ramus. Fraunce is indeed now pronounced France. Abraham, however, is a contrary. Fraunce may have prefigured the interdisciplinary study of law that took hold in the twentieth century, roughly three centuries after his death, but his book and influence were rapidly forgotten.

Frank, Jerome (Frang-ck) [Judge, Jurist and Reformer, 1889-1957] From the Norman *Franc* meaning javelin and also referring to *Franconia*, a region in Germany settled by the Franks. Jerome from the Greek *hieronymos* meaning sacred name. In the Germanic, from *geri* meaning spear and *hraban* meaning raven. Rhetorical figure *dialisis* or the dismemberer. Fated to the role of rebel and iconoclast—throwing javelins at sacred names. Preordained to dismember the sanctities of law. Author of *Law and the Modern Mind* a classic realist study of the myths of law which made copious use of Freudian theory. In that and numerous other writings Frank dismembered the normative apparatus of law in favor of a view of facts determining outcomes. Fact-skepticism argued that the uncertainties of fact determination make law unpredictable and thence that social science rather than normative jurisprudence was the best avenue to understanding law. Nominally destined to be subject to French and German influences—to continental thought—and to be direct in his mysticism. Frank by name and by nature.

Gabel, Peter (Gay-bull) [New College] Various etymologies including German *gabel* meaning fork and hence someone who lives near a fork in a road or river; from Germanic *gable* meaning tax, and hence tax collector; and finally from Slavic *jablo* meaning apple tree. Phonetically close to gab and gabbler, meaning talkative or loquacious. Peter meaning rock. Rhetorical figure *asphalia* (also sometimes *certitudo* or *securitas*) the figure of personal guarantee. Fated to choose the harder road when faced with a fork in the path of his career. Preordained to intellectual authenticity, to knowledge of intimacy and friendship, and to personal guarantees of his conversation. One of the founders of the critical legal studies movement in the United States, he left a secure job and high status prospects at University of Minnesota School of Law to go to New College, San Francisco to found an alternative law school. Co-author, with Duncan Kennedy, of a famous critical legal dialogue, "*Roll Over Beethoven*."<sup>76</sup> Author of numerous articles on the psychology and specifically the existential

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<sup>76</sup> Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1 (1984).

deficits of lawyers and lawyering.<sup>77</sup> Now writes more for the (intellectual) popular cultural journal *Tikkun* than for law reviews or other non-dialogic or more simply unread academic forms.

Gaius (Guy-ous) [Jurist and Teacher circa C.E. 110-180] From the Hebrew *gai* meaning valley. Old French *gui* meaning guide or rope that guides. In Medieval Latin sometimes *gaiola* meaning gaol or prison. Occupational name for one who guides. Rhetorical figure *simploce*, meaning repetition, interweaving, or reply. The same word, face, visage, countenance, feature, appears again and again. Destined to be the constant guide of law and lawyers. Preordained to become a common noun, a sign of the original contract or constitution of the legal. An unending source or storehouse of knowledge and principles of law. Author of the *Institutes*, a book for first year law students composed in the second century of the Christian Era. He became, for lawyers, *Gaius noster* (our Gaius) and in later Latin, *Gauis* and *Gaia* became the generic names for bridegroom and bride at marriage festivals. Two millennia after its composition, the *Institutes* is still in print and studied.<sup>78</sup> A guide indeed.

Gearey, Adam (Gyr-ri) [University of London, Birkbeck College] From Gaelic *gadhar* meaning hound or mastiff, and latterly from the German *gari* meaning spear. In English a nickname for someone changeable, both passionate and fickle. Adam from *adama* meaning earth, and biblically from Adam the first man. Rhetorical figure *charientismus* or figure of mitigation, of saying disagreeable things with agreeable style. Destined to swiftness of thought and action, to leading the pack or being at the forefront of his peers. Preordained to play a leading role in interdisciplinary legal studies. Gearey is in part a contrary in that far from being fickle the mastiff or hound connotes loyalty, persistence and perhaps passionate attachment to causes. Nominally both a critic and an organizer or spearhead of his group. A critical legal scholar who has been remarkably original and pleasingly erudite in his critical choices of thesis. He writes on Joyce, on Christian conceptions of love, and authored the first book length study of the aesthetics of law.<sup>79</sup> The acceptable face of legal critique.

<sup>77</sup> Peter Gabel, *The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 TEX. L. REV. 1563 (1984); Peter Gabel, *Alienation v. Community*, *TIKKUN*, July/Aug. 2001, at 33.

<sup>78</sup> *GAIUS, INSTITUTES* (Francis De Zulueta trans., 1956).

<sup>79</sup> *ADAM GEAREY, LAW AND AESTHETICS* (John Gardner ed., 2001).

Harrington, Christine (Hair-ing-tun) [New York University] From the Old English *haer* meaning heath and referring to "settlement on stony ground." Alternate root is Gaelic *arrachtach* meaning mighty, powerful. Christine from the Latin *Christianus* or follower of Christ. Rhetorical figure *antipophora* or figure of response: "and is when we will seeme to aske a question to th'intent we will aunswere it ourselves, and is a figure of argument and also of amplification."<sup>80</sup> Christ, of course, is the paradoxical figure of the martyr, and in Christian terms of the short-term failure that constitutes long-term success. Thus fated to establishing powerful positions in hostile environments, and destined to settle or build institutionally upon stony ground. Trained in politics, and author appropriately enough of a thesis on shadows, she became a leader in the Law and Society Association and movement.<sup>81</sup> Long-term member of the Amherst law and society seminar. She founded the Institute for Law and Society at New York University. A powerful achievement and tribute to her considerable capacity for argument, amplification, and martyrdom. A cross-disciplinary institute, her program exists uneasily between politics and law. Over many years it has failed to gain the institutional recognition or support that it deserves. A settlement on stony or simply legalistic ground.

Hotman, Francois (Ot-maan) [Sixteenth-century French jurist] French translation of the Latin *vir caldus* or hot man, meaning man of choleric temperament and polemical disposition. Francois, meaning "free man" and latterly French. Rhetorical figure *antirrthesis* or denunciation. Destined to be heated or excitable in character and distinctively French. Author of *Franco-Gallia*, an account of the customs and laws of France and also of a highly erudite tirade against the teaching of Roman law in Renaissance Europe, titled *Anti-Tribonian*.<sup>82</sup> By name and nature a peculiarly Gallic, which is to say stylish, polemicist.

Jacobson, Arthur (Jakob-sun) [Cardozo School of Law] Son of Jacob, the latter from the Hebrew *Yaakov* meaning heel. The

<sup>80</sup> PUTTENHAM, *supra* note 36, at 204. Henry Peacham cites Cicero: "I grant there is in it great labors, and many perils, yet by painful travail and valiant adventures therein shall ensue immortal glory." PEACHAM, *supra* note 36, at 71.

<sup>81</sup> CHRISTINE B. HARRINGTON, *SHADOW JUSTICE: THE IDEOLOGY AND INSTITUTIONALIZATION OF ALTERNATIVES TO COURT* (1985).

<sup>82</sup> FRANCOISE HOTMAN, *FRANCO-GALLIA OR, AN ACCOUNT OF THE ANCIENT FREE STATE OF FRANCE* (London, Goodwin 1711); FRANCOISE HOTMAN, *ANTITRIBONIAN OU DISCOURS D'UN GRAND ET RENOMME* 144-45 (Paris, Perrier 1603) (1567) [hereinafter HOTMAN, *ANTITRIBONIAN*].

biblical Jacob was the twin of Essau and went on to fight for Israel. Arthur, Celtic, from follower of Thor, the Norse God of war. Rhetorical figure *procatalepsis* or anticipation. Destined to be a smooth man, a bald man, just as Esau was a hairy man, or simply hirsute. Preordained to write and fight for Jewish causes, while by virtue of his forename that war must be staged in the mind, at the level of image and imagination rather than blood and killing. Author most prominently of "*The Idolatry of Rules: Writing Law According to Moses, with Reference to Other Jurisprudences*," part of a symposium on the work of the Jewish French philosopher and proponent of deconstruction, Jacques Derrida.<sup>83</sup> Shares his forename with the legendary King Arthur of the Round Table. Likely, therefore, to invent imaginary schemes, to envision Camelot, and to attend to the utopian.

Justinian (Yoost-inyan) [Emperor and Codifier, c 483-565] From the Latin *jus* law, and *justus* meaning right and thence justice. Rhetorical figure *merismus* or the distributor. Destined to a leading role in law and in the preservation of justice. With the aid of Tribonian carried out a comprehensive codification of Roman law (528-534), the *Digest*, and also promulgated his own laws, the *Novels*, and wrote a key textbook or introduction to law, the *Institutes*. One or two manuscripts survived and were rediscovered in the eleventh century. These formed the basis of European legal education. Nominally destined to define law as justice and indeed begins the *Institutes* by defining jurisprudence as a knowledge of things divine and human.<sup>84</sup> In similar style, the forward to the *Digest* cites God as its author and states subsequently in a more distributive mode that law is the art of the good and the equal.<sup>85</sup>

Kennedy, Duncan (Ken-aidy) [Harvard Law School] From the Gaelic *ceann* meaning head and *eidigh* armored, so meaning helmeted head. Ironically, first recorded in a Scottish family claiming descent from the Earl of Duncan (c. 1228). Duncan from the Gaelic *donn* meaning dark or brown and *ceann* meaning head. Thus two headed, perhaps Janus faced. Rhetorical figure *allegoria*, meaning extended metaphor, or figure of fair semblance. It is described by Puttenham as the courtly figure par excellence, most commonly used by politicians, as in "[q]ui nescit dissimulare

<sup>83</sup> See DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE (Drucilla Cornell et al. eds., 1992). This text is a partial republication of volume eleven of the *Cardozo Law Review*.

<sup>84</sup> JUSTINIAN, INSTITUTES 1.1.1 p. 37 col. 1.

<sup>85</sup> JUSTINIAN, DIGEST. 1.1.1. p. 1.



*nescit regnare*," ("he who knows how to dissemble knows how to rule.")<sup>86</sup> Twice named after the head, destined to be a brilliant intellectual, one with the equivalent of two brains, scintillating, with two tongues and so fated to be improbably loquacious. Vulnerable by virtue of exposure, Kennedy is cautious of friendship and remains frequently helmeted or protected. Author of many radical and iconoclastic texts, prime amongst which is *Legal Education as Training for Hierarchy* and much later *A Critique of Adjudication*.<sup>87</sup> The former text denounced legal education as a charade for the inculcation of political conservatism; the latter denounced the judiciary as a charade for the promulgation of political conservatism. Has been true to his nominal fate and has frequently needed his helmet. Shares his name with the Kennedy clan, including former president J.F. Kennedy. Political through and through.

Leiter, Brian (Light-er) [University of Texas School of Law] From the Old English *laedan*, to lead and also sometimes used to refer to someone who led sport or dance. Also frequently an occupational name for someone who worked with lead. An alternate etymology from the German *leite* meaning hill or slope. Brian from the Celtic *bre* meaning hill and latterly connoting eminence. Rhetorical figure *tapinosis* or the abaser. Twice named after a hill and so doubly likely to be eminent or at least to dance or sport in a prominent and visible position. As his name suggests phonetically, that dance or sport will likely be light and so in polemical terms humorous. The mixture of lightness and lead suggests a contrary, perhaps the humor of the lead balloon. Serious scholar of Nietzsche and the German philosophical tradition but also a humorous polemicist and proponent of the lighter side of law. Thus, for example, writing in *The Green Bag* on the paucity of philosophy in law schools, Leiter offers the apparently empirical opinion that "more than half of what appears in top law reviews purporting to deal with philosophy or philosophical topics is sophomoric, the kind of writing that would prevent an

<sup>86</sup> PUTTENHAM, *supra* note 36, at 186 (author's translation).

<sup>87</sup> DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (1983). My thanks to Duncan for supplying me with a copy of this rare and elegant text; see also DUNCAN KENNEDY, *A CRITIQUE OF ADJUDICATION: FIN DE SIÈCLE* (1997). I must confess disconsolately that I too have been guilty of testing Kennedy's protection or state of helmetedness, as in Peter Goodrich, *Duncan Kennedy as I Imagine Him: The Man, The Work, His Scholarship, And The Polity*, 22 CARDOZO L. REV. 971 (2001), and further in Peter Goodrich, *Laws of Friendship*, 15 LAW & LITERATURE (forthcoming 2003).



undergraduate from getting into a PhD program.”<sup>88</sup> The footnote proof of this point consists simply of a reference to two articles, one by James Boyle, the other by Pierre Schlag, both highly successful law professors specializing in legal theory but not sharing Leiter’s predilection for analytic method. Interestingly, in this jape Brian omits the third name in the group, Jack Balkin whom he used to link to and equate with Schlag and his sophomoric ilk.<sup>89</sup> Balkin had at this point moved to Yale Law School and for some inexplicable reason now escapes Leiter’s light touch. The humor lies in the highly polemical or simply political character of a philosophical judgment that is in terms of analytic method supposed to be neutral. Whereas the cliché runs “many a true word said in jest,” Leiter perhaps offers an illustration of the inverse proposition: “many an erroneous statement comes wearing the mask of seriousness.”

Littleton, Sir Thomas [Judge and writer, Member of Inner Temple, 1415-1481] From Old English *lytel* meaning small and *tun* meaning enclosure, settlement or holding. Thomas a biblical name implying doubt. Rhetorical figure *synecdoche* or part for whole. Destined to detail or particularity, to the small things and small holdings, to the inside of enclosures, to the insular. Dubious of the unenclosed and of the continental. Author of *Tenures*, a three volume work on English property law and custom, the first volume dealing with estates, the second with tenures, and the third with co-ownership. It was probably the most successful English law book ever written, enjoying roughly ninety editions. Whatever its innate merits, Littleton’s *Tenures* became a load stone of common law imperialism and lies at the roots of the insularity and sclerosis of the early modern instauration of an Anglican common law. Thomas or doubter would seem in this case to be a contrary. Littleton was famous for the clarity and certainty of his prose.

Llewellyn, Karl (Th-lew-ellen) [Jurist and Commercial lawyer, 1893-1962] From the Old Welsh *llyw* meaning leader. Karl from the Latin *Carolus*, meaning man, with connotations of strength and majesty drawn from the lauded French emperor Charlemagne (*Carolus Magnus*). Rhetorical figure *paradiastole* or putting together of dissimilar things. Destined to strange combinations leading to brilliant, even noble, novelties and some obscurities. A leader of the American legal realist movement and author of

<sup>88</sup> Brian Leiter, *The Law School Observer*, 5 GREEN BAG 2D 101 (2001).

<sup>89</sup> Brian Leiter, *Objectivity and the Problems of Jurisprudence*, 72 TEX. L. REV. 187, n.4 (1993) (book review).

several books on common law method and the limited use of studying appellate court rules.<sup>90</sup> Rule skepticism, however, did not mitigate against Llewellyn also writing orthodox and influential works in commercial law and contributing signally to the draft Uniform Commercial Code.

Lysyk, Stephanie (Lie-sick) [Maitresse en droit Canadienne] From the Polish *lis* meaning fox and thence cunning person. Alternately from Gaelic *Iasachta* meaning strange or foreign. Phonetically close to *lit*, the French for bed, and to *lire* as in to read, and thus proximate to the bed of justice. Stephanie from the Greek *Stephanos* meaning crown. Etymology shared with Lysenko. Rhetorical figure *expeditio* or the speedy dispatcher. Destined to be a crowning or royal juristic figure though also strange, attracted to the foreign, and an erudite lover of dissimilar things. A doctor of literature who specializes in Rabelais and then trains in law. An erudite lawyer who writes on the comic drama of justice. Author of *Making a Farce out of Justice*, a sparkling account of the Basoche, an organization of fifteenth century Parisian law clerks who authored and performed satirical mock trials. Francophile and Latinate, she is what the Renaissance would have termed an illustrious or erudite woman, a *femme forte*, a satirist and strangely brilliant thinker. She is a peculiarly thorny critic and an extraordinarily generous correspondent. Author of the main title of this essay.

MacCormick, Sir Neil (Mack-caw-mick) [University of Edinburgh; Member of the European Parliament] From the Gaelic *corb* meaning raven and *mac* meaning son. Neil from the Irish *Niall*, meaning champion, and mediately from *niger* meaning dark. Rhetorical figure *periphrasis* or circumlocution. Fated to be the son of someone seemingly greater. Preordained to work within a tradition of scholarship and nimbly to develop or extricate good arguments for poor causes. Son of the Chancellor of Glasgow University, who was also a famous Scottish litigant, the plaintiff in *MacCormick v The Lord Advocate*.<sup>91</sup> Preordained to be an elegant systematizer, Sir Neil devoted much of his academic career to embellishing the work of the English academic jurist H.L.A. Hart.<sup>92</sup> His own noted and yet scarcely original contribution to

<sup>90</sup> K. N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* (1960); KARL N. LLEWELLYN, *JURISPRUDENCE: REALISM IN THEORY AND PRACTICE* (1962); KARL N. LLEWELLYN, *THE COMMON LAW TRADITION: DECIDING APPEALS* (1960).

<sup>91</sup> *MacCormick v. The Lord Advocate*, 1953 Sess. Cas. 396 (1953).

<sup>92</sup> NEIL MACCORMICK, *LEGAL REASONING AND LEGAL THEORY* (1978); NEIL

jurisprudence was the theory of law as an institutional fact. As the nominal allusions to the raven and to darkness also indicate, a certain dark side which drew a Scottish nationalist to write in eulogy of the most English of jurisprudences and led to the effervescent adoption of an equally Anglican view of law as establishment or mere institutional fact. Another instance of a politician operating under the analytic guise of neutrality. After a career paradoxically devoted to the most English of legal theories and yet also to failed attempts to be elected as a Scottish Nationalist Member of the British Parliament, Sir Neil eventually became a Member of the European Parliament. Anecdotaly said to have commented of his new role that the frequency of travel between Brussels and Strasbourg, the two sites of the European Parliament, means that he has to keep a set of suits in each place. Hence versatile. What he achieves sartorially he exceeds academically.

Manderson, Desmond (Mand-a-son) [McGill University, Montreal] Of uncertain origin. It may be from the Latin *mendicare*, to beg, and thence a nickname for a beggar. Alternately from Middle English *maund*, basket, and thence maker of baskets. Finally, possibly from Latin, *commandare*, to command, and thence someone in a position of authority. Desmond from the French *monde* (from which *mondaine*, or worldly) meaning world or society. Rhetorical figure *paroemia* or proverb. Destined to travel between countries and disciplines. Started out as a concert pianist and then trained in law. Fated to a leading role in interdisciplinary legal studies and to academic globetrotting; moving from McGill in Canada to Sydney, Australia, and then back to Canada. Author of a sociology of drug regulations and also of *Songs Without Music*, a study of law and aesthetics which argues "as in music, so in law."<sup>93</sup> An aesthete in law, a dedicated follower of juristic rhythms, a proponent of method as melody, and of judgment as tone. Full of worldly wiles and aesthetic *mots justes*. Also noteworthy that phonetically Manderson is a double masculine, man and son. Likely thus that his obsession with the aesthetic, in disciplinary terms with the feminine, betrays a contrary, a fear of femininity both outside and within.

Mazor, Lester (May-soar) [Hampshire College] From the Polish

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MACCORMICK, H.L.A. HART (1981).

<sup>93</sup> DESMOND MANDERSON, *SONGS WITHOUT MUSIC: AESTHETIC DIMENSIONS OF LAW AND JUSTICE* (2000).

place name *Masuria*. Alternately from the Spanish *mazo* meaning mallet. Cognate with *macho* and the Latin *masculus* meaning man and manly. Lester from the Hebrew *Lazar* meaning may God help him. Alternately from the Old English meaning camp or protected place. Rhetorical figure *hyperbaton* or the trespasser. Destined to forceful thought or to what Nietzsche termed philosophizing with a hammer. As his forename suggests, thinking with a mallet is not academically popular and so has needed protection, institutional encampments, and the aid of God, on numerous occasions. Began his career as a law professor at Stanford University. Was refused tenure, perhaps in part for being Jewish. Moved to University of Utah and Marxism. From there moved to Hampshire College and an anarchistic philosophy of law.<sup>94</sup> Rationalist with a big club.

Mills, Linda (Mil-z) [New York University] From the Latin *molere*, to grind and alternately from the Old English *mylen*. Topographic name for someone who lives near a mill. Mill and miller were central features in medieval settlements, and hence the frequency of the name and the prominence of its bearer who is now Vice Provost for Interdisciplinary Initiatives and University Life at NYU. Linda from the Latin *libet* meaning pleasing and latterly pretty. Some have suggested that Linda is derived from the Old German for serpent. Serpent, from the Latin *serpo*, to crawl but also to proceed gradually, to attend closely to detail, to remain well grounded. Rhetorical figure *prosographia*, the figure of portraiture or the inscriber of the face. Born for love and for love of detail. Thus both a therapist and a lawyer, and married to a lawyer. The latter attribute is not uncommon: a statistically disproportionate number of lawyers are married to therapists, and thus, logically, a lot of therapists marry lawyers. What is uncommon is for a lawyer to train as a therapist as opposed to taking the easy—the cynical might say cheaper—route of simply marrying one. It is this combination that dictates or motivates a scholarly career marked most of all by unflinching focus upon detail and extraordinary honesty or candor. Working principally in the field of domestic violence, she is author most recently of a widely publicized book titled *Insult to Injury*.<sup>95</sup> In that work Mills

<sup>94</sup> Lester J. Mazor, *Disrespect For Law*, in *ANARCHISM* (J. Roland Pennock & John W. Chapman, eds. 1978); Lester J. Mazor, *Some Recent Discoveries Concerning the Modern State*, *BLACK ROSE* 15 (Summer 1979).

<sup>95</sup> LINDA G. MILLS, *INSULT TO INJURY: RETHINKING OUR RESPONSES TO INTIMATE ABUSE* (forthcoming 2003). See also Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 *HARV. L. REV.* 550 (1999).

argues against the highly legalistic feminist orthodoxy of mandatory arrest and prosecution, and demands that each woman be listened to, and that each case be treated uniquely. Proposing that judgment be both down to earth and tellurian, that the face to face of justice be taken seriously, she applies a philosophy of love to the quandary of law. Fate alone could dictate that her philosophy should apply her first name, love, to her second name, her practice, work, or law. Between the two names, the Old German for snake suggests also the sin of Eve, the practice and the dangers of knowledge. Thus fated to polemical stances whose unpopularity is in inverse ratio to their truth: the further ahead of her time that her work is, the more vigorously yet unsuccessfully it is resisted by the orthodox. An innovator who performs her paradoxical etymological destiny of giving a face to law.

Moore, Nathan (Maw-ur) [University of Kent, Canterbury] From the Latin *Maurus*, meaning Phoenician or Eastern, and with connotations of both mysticism and bodily wisdom, as in *ex oriente lux*—light comes from the East. Phonetically close to *mores* meaning customs though properly these would be the inverse of Western customary norms or common law. Alternate derivation from the Gaelic *Mordha* meaning great or proud. Early historical connection to the Templars, *Johannes filius more*, 1185. Nathan from the Hebrew given name *Natan* meaning gift or given by God and borne of a minor prophet. Rhetorical figure *cronographia* which Peacham defines as “when we do describe any time for delectations sake,”<sup>96</sup> and Puttenham more succinctly depicts as “the counterfait of time.”<sup>97</sup> Fated to invert the mores of Western common law with the bodily pleasures or “desiring regimes” of an essentially Eastern wisdom. Destined to displace the past with the future, custom with innovation, precedent with prophecy, and perhaps method with jazz. His first major article offers veiled references to Marx’s *Eighteenth Brumaire* and the materialist critique of the overwhelming burden of the past upon the oppressed.<sup>98</sup> With coruscating wit he argues:

<sup>96</sup> PEACHAM, *supra* note 36, at 66.

<sup>97</sup> PUTTENHAM, *supra* note 36, at 239.

<sup>98</sup> See Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, in KARL MARX & FREDERICK ENGELS: SELECTED WORKS IN ONE VOLUME 94 (4th prtg. 1977). It is tempting to observe that materialism is historical: there is no body without its inscriptions, no face save as a representation, no voice without writing. None of which detracts from Moore’s brilliant essay, but rather subjects it to a trajectory, and locates it within a geography and history or *longue durée* of theory. What he offers in these admittedly now distant terms is a loosely Leninist critique of empirico-criticism. Sadly perhaps we should be wary of ignoring the empirical fate of that critique.

The analysis of law cannot claim to be critical if it only recalls the bodies upon which law can be shown to have acted. Such recalling can only fall within a specific realm of logic or thought. This is problematic as it is not future but past orientated. It revolves around transmission of the past to such a degree that the potential of the future is reduced to, or made dependant upon, the re-appearance of the past in the future.<sup>99</sup>

Curiously for a materialist he seeks a future outside of history and a body outside of inscription and law: a fully conscious, entirely productive, and wholly incorporated regime of desire. He offers thus a juristic form of Buddhism via Deleuze and ideally will found a radical legal cult, perhaps the Outer Temple. Thus destined by name and enthusiasm to prophecy, and specifically to utopianism and its attendant atemporalism. Wishing to have done with the judgment of God his name nonetheless denotes someone who is ever drawn back to the temple, addicted to the *plus ultra* or to something more.

Rawls, John (Raw-als) [Harvard University] From the Old Norse, composed of *rad* meaning counsel and *wolf* meaning wolf. John, from *Yehocanan* meaning God is gracious. Name made popular by St John the Evangelist. Rhetorical figure *pragmatographia* or counterfeit action. As illustration, Puttenham cites Lord Nicolas Vaux's ditty on Cupid which begins: "When Cupid scaled first the fort, / Wherein my hart lay wounded sore / The battrie was of such a sort, / That I must yeeld or die therefore."<sup>100</sup> And ends, crudely enough: "There might you heare the Canons rore, / Each peece discharging a lovers looke, & etc."<sup>101</sup> Fated to success but of a contradictory sort. Preordained to give the counsel of wolves, thus his most famous contribution in *A Theory of Justice* consists of proposing an "original position," locked behind a veil of ignorance from which wolves—pre-social men—judge what is just.<sup>102</sup> The theory of justice and later concepts such as that of overlapping consensus have enjoyed enormous success of a normative kind. Being that these works advocate the merits of American liberalism and specifically of the status quo, their proposed course of action is in essence things as normal or proceeding as we are.

Rosenfeld, Michel (Rows-en-felled) [Cardozo School of Law] From the Ashkenazic, an ornamental surname from *royz*, the word

<sup>99</sup> Nathan Moore, *A Distant Hand Fell From His Shoulder*, 11 LAW & CRITIQUE 185 (2000).

<sup>100</sup> PUTTENHAM, *supra* note 36, at 240.

<sup>101</sup> *Id.*

<sup>102</sup> JOHN RAWLS, *A THEORY OF JUSTICE* 136-42 (1971).



for the flower, and a metonymic from the Yiddish *Royze* derived from the word for the flower. Alternate etymology from the German *Rothais*, recorded in *Domesday Book* and apparently made up of the elements *hrod*, renown, and *haidis*, kind. Michel from the Hebrew *Michael*, "who is like God." Archangel Michael was the Prince of Angels and chief divine messenger who carried out God's judgments. Michel, finally, is the French spelling of Michael and portends a connection with or interest in France and the French. Rhetorical figure *sinonimia* or figure of store or interpretation. Per Puttenham: "When so ever we multiply our speech by many words or clauses . . . one of them doth expound another."<sup>103</sup> Bearer of an ornamental name, Rosenfeld works in what is seen, at least juristically, to be the ornamental disciplinary domain of continental legal theory. He offers kindly or *Just Interpretations*.<sup>104</sup> Nominally fated to hermeneutics, Rosenfeld is further destined to the floral or figural, to the troubled status of a rhetorician in a discipline that denies its use of schemes and tropes. In its alternate etymology, Rosenfeld also implies kindly interpretations or, in the language of the cultural revolution, he would let a thousand flowers bloom. Michael, by contrast, suggests advocacy of causes and in *Just Interpretations*, Rosenfeld does indeed act as the messenger or kindly advocate of deconstruction. He argues early in the work that "the deconstructive process implies an ontology of the unbridgeable separation of self and other . . . an ontology of infinite postponement of the reconciliation of self and other."<sup>105</sup> He goes on to add, kindly enough, for those with separation anxiety, or frightened by postponement, that "this ontology is supplemented by an ethic of inclusion, and care for the other." Polyglot and prominent, as his name suggests, Rosenfeld has been a long serving President of the International Association of Constitutional Law, and is founding Editor-in-Chief of *ICON*, its journal.

Sarat, Austin (Sur-rat) [Amherst College] Of uncertain etymology though phonetically close to "seras," the French future tense of the verb to be—as in "you will be," or its Spanish equivalent, "que sera, sera"—"what will be, will be." Austin, Old French diminutive of Augustine, meaning to increase or spread influence. Biblical reference to the Church Father, Saint Augustine of Hippo, and in jurisprudential terms to John Austin, author of *The*

<sup>103</sup> PUTTENHAM, *supra* note 36, at 214.

<sup>104</sup> MICHEL ROSENFELD, *JUST INTERPRETATIONS: LAW BETWEEN ETHICS AND POLITICS* (1998).

<sup>105</sup> *Id.* at 19.



*Province of Jurisprudence Determined*.<sup>106</sup> Rhetorical figure *apodioxis* or the refuter. Destined to be influential, to co-ordinate academic movements, administer organizations, to edit collections of work, and to demarcate intellectual territories. Preordained to address the boundaries of his discipline—to determine its (disputed) province—and to focus extensively on what will be, namely death. Editor of innumerable book series in the sociology and cultural study of law; formerly President of the Law and Society Association; Founding President of the Law, Culture, Humanities Association. Author of *When the State Kills: Capital Punishment and the American Condition*; editor of *The Killing State: Capital Punishment in Law, Politics, and Culture*; as also of *Pain, Death, and the Law*; and numerous other works on fate, meaning and violence.<sup>107</sup> Clearly a campaigner and formidable adversary in argument, but as the surname suggests there is also a tendency to privilege function over purpose, and symmetry over direction—in the end, one might say, *que Sarat, Sarat, and what will be, will be*.

Schlag, Pierre (Sh-lag) [University of Colorado] From the German *schlag* meaning cream. Pierre from *Petrus* meaning rock. Rhetorical figure *prosopopoeia*, the figure of impersonation which attributes human characteristics to animals, things, or ideas. Destined to pour cream upon rock, criticism upon deaf ears. Preordained to engage wondrously in syncretic intellectual exercises, mixing the foreign—the French—with the American, the anti-normative with the pragmatic. Described for this reason, in one critical appreciation as “Pierre the Anomalist.”<sup>108</sup> Author of an efflorescence of articles including “*Normative and Nowhere to Go*,” and “*The Aesthetics of American Law*,” as well as of a book entitled *The Enchantment of Reason*.<sup>109</sup> Each title implies a paradox that coincides with the antithesis embodied in the name: an author of fiction writing about law; an artist addressing a domain without images; a magician seeking to break the spell of

<sup>106</sup> JOHN AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED* (Law Book Exchange 1999) (1832).

<sup>107</sup> AUSTIN SARAT, *WHEN THE STATE KILLS: CAPITAL PUNISHMENT AND THE AMERICAN CONDITION* (2001); *THE KILLING STATE: CAPITAL PUNISHMENT IN THE LAW, POLITICS, AND CULTURE* (Austin Sarat ed., 1999); *PAIN, DEATH, AND THE LAW* (Austin Sarat ed., 2001); *THE FATE OF LAW* (Austin Sarat & Thomas R. Kearns eds., 1991); *LAW'S VIOLENCE* (Austin Sarat & Thomas R. Kearns eds., 1995).

<sup>108</sup> Peter Goodrich, *Pierre the Anomalist: An Epistemology of the Legal Closet*, 57 U. MIAMI L. REV. (forthcoming 2003).

<sup>109</sup> PIERRE SCHLAG, *THE ENCHANTMENT OF REASON* (1998); Pierre Schlag, *The Aesthetics of American Law*, 115 HARV. L. REV. 1049 (2002); Pierre Schlag, *Normative and Nowhere to Go*, 43 STAN. L. REV. 167 (1990).

the logic of law. Fated to fictionalizing or humorously re-describing legal debates: legal doctrine becomes the fiendish plot of "the Normativo"; legal positivism is depicted as the jurisprudence of the holding pattern; and Pierre himself shifts from an early self-presentation as a failed cab driver to a pedagogue, to the organizer of trans-historical juristic parties. Be that as it may, and as has been coined by my eponymous colleague Professor Gudridge of Miami Law School, whatever Pierre writes, and however recalcitrant or impermeable the subject matter, it is always written *con brio* and "mit schlag."<sup>110</sup>

Schroeder, Jeanne (Shrow-der) [Cardozo Law School] From the Northern German occupational name for a tailor, from *schraten* to cut. Also used for shoemakers and leather cutters. Jeanne a female form of *Yochanan* or God is gracious. Rhetorical figure *apostrophe* or interruption of discourse, often in a vehement tone. Fated to academic and legal precision, to cutting, interrupting, correcting. Preordained successfully to propound a theory of law that involves significant attention to cuts or cutting. Prominent interpreter of Lacanian theory in relation to law. Author of *The Vestal and the Fasces*, a Hegelian feminist theory of law which reads Hegel through Lacan and attends significantly to the theory of castration anxiety as intrinsic to the formation of the juristic self and as structuring the legal concept of property:

[T]he masculine subject constantly needs to reassure others (and try to fool himself) that he actually has "it" by identifying an *objet petit a*—an imaginary object that stands for a place in the real. He grasps the phallic substitute for the *Phallus* in his hand and wields it shouting, "See, here 'it' is!"<sup>111</sup>

Schütz, Anton (Ssh-oots) [London and Paris] From the Old German *skiozan*, to shoot. Occupational name for a bowman. Historical reference to Heinrich Schütz (1583-1672) a composer born into a French family that settled in Saxony. Anton from the Latin *Anthonius*, of unknown etymology, the name of several celebrated Emperors and of a famous orator. Latterly meaning worthy of praise and dubiously yet significantly from the Greek *anthos* or flower. Rhetorical figure *erotema* or the questioner. Student of the French philosophers Michel Foucault and Pierre Legendre, Schütz is nominally destined to an international and

<sup>110</sup> Patrick Gudridge, *Mit Schlag (Repetitions)*, 57 U. MIAMI L. REV. (forthcoming 2003).

<sup>111</sup> JEANNE LORRAINE SCHROEDER, *THE VESTAL AND THE FASCES: HEGEL, LACAN, PROPERTY, AND THE FEMININE* 218-19 (1998).

interdisciplinary scholarship that like the craft of the bowman facilitates trajectories or shoots the arrows of knowledge into distant and obscure locations. There, as his forename suggests, erudition can flourish. Fated to combine music with law, the Francophile with the Teutonic and the Anglo-Saxon, the rhetorical with the philosophical. Concerned most of all with why we shoot—with the direction of our epistemic and polemical arrows. Thus his major article "*Sons of Writ, Sons of Wrath*" explores an unexplored passage from Pauline theology as a guide to legal thought. In a further exemplary essay "*Desiring Society: Autopoiesis Beyond the Paradigm of Mastership*" he notes that autopoiesis "means, first of all, the appearance of a new and unknown population on the blackboard [better, dartboard] of theory."<sup>112</sup> A brilliant teacher, an epistemic Cupid firing darts at somnolent students.

Sexton, John (Sex-tun) [Late twentieth century Dean of NYU Law School, latterly President of NYU] Occupational name for a sexton or churchwarden, the officer in charge of sacred vessels and vestments, from the Latin *sacristanus*. Alternate etymology from the Irish *seasuighim*, to resist or defend. John from *Yochanan* meaning favored by God. Rhetorical figure *anacoenosis*, that of communication and specifically of consultation with adversaries and deliberation with judges. Fated to be a brilliant steward, an advocate of his community or school and a proponent of morality in the uses of law.<sup>113</sup> Appointed Dean of New York University Law School, a mid-ranking local law school in the late 1980s. Through brilliant fundraising and through generous intellectual vision transformed the School into a national center of excellence and of interdisciplinary innovation within the US legal academy. Now a top-ranked law school, Sexton has made the obvious move and become President of New York University, which is to say he

<sup>112</sup> Anton Schütz, *Sons of Writ, Sons of Wrath: Pierre Legendre's Critique of Rational Law-Giving*, 16 CARDOZO L. REV. 979, 979 n.1 (1995) (discussing *Ephesians* 2:3: "[E]ramus natura filii irae"); Anton Schütz, *Desiring Society: Autopoiesis Beyond the Paradigm of Mastership*, 5 LAW & CRITIQUE 149 (1994). As Tim Murphy (from the Gaelic *muir*, meaning sea, and *cadh*, meaning warrior, and thence floating or shifting adversary) puts it in an article contemporary with Schütz's, "[l]aw is no longer an arrow sent from an outside (a God, a King, a Judge) into the deep interiors of the human heart. . . ." W.T. Murphy, *Systems of Systems: Some Issues in the Relationship Between Law and Autopoiesis*, 5 LAW & CRITIQUE 241, 263 (1994).

<sup>113</sup> See, e.g., John E. Sexton, "Out Of The Box" *Thinking About The Training Of Lawyers In the Next Millennium*, 33 U. TOL. L. REV. 189 (2001); Note, *Toward A Constitutional Definition Of Religion*, 91 HARV. L. REV. 1056 (1978); John E. Sexton, Charles W. Eliot, Unitarian Exponent of the Doctrine of Tolerance in Religion (1978) (unpublished Ph.D. dissertation, Fordham University) (on file with the Fordham University Library).

has become steward of a larger ward. His successor at NYU law school, Revesz—from the Latin *rebellis* and the Old French *revel*, both meaning to rebel, is likely to rein back his predecessor's innovations.

Shapiro, Scott [Cardozo School of Law] From the Hebrew *shapir* meaning fair or lovely. Scott an ethnic name for someone from Scotland, though its original referent is someone from Ireland and connected to the Old Welsh (celtic) *ysgthru*, to cut, whose root lies in the celtic habit of tattooing themselves with iron points. Rhetorical figure *paronomasia* or wordplay. Fated by name to love the Scots and thus married to a Scot. Destined to write beautifully, and in a style that cuts, about very little. Thus an innate or nominal predilection for analytic philosophy, a tradition of wordplay, which the medievals termed “chop logic.” The alternate connotation of Scott, tattooing, suggests a facility to work with the finest of points, to prick surfaces, to ornament the appearance of things superficially though painfully. By nomination and inclination likely to be skilled in the philosophical art of balancing angels on pinheads.<sup>114</sup>

Simpson, A.W. Brian (Sim-son) [University of Michigan School of Law] From the Hebrew *shemesh* meaning sun and Biblical reference or root is *Samson*, meaning great strength. An alternate etymology derives from the Hebrew *shama*, to hearken. Brian from the Celtic *bre* meaning hill and latterly connoting strength and eloquence. Rhetorical figure *metalepsis* or figure of the far-fetched understood in a literal sense, namely someone who seeks very distant causes for present effects. Twice named strong, he is fated to being an eminent scholar. Preordained to hearkening or listening to the sources of law and thus to being a renowned historian, an archivist and archaeologist of common law and of curious cases.<sup>115</sup> Author of coruscating histories of Land Law and of Contracts and also editor of the somewhat unadventurous *Biographical Dictionary*.<sup>116</sup> The multiple references to strength and to the figure of Samson also suggest a powerful polemical ability as witnessed best in an utterly scathing review of the work of another legal historian, Morton Horowitz.<sup>117</sup>

<sup>114</sup> Editor most recently, with the necessarily hard-working Jules Coleman, of *THE OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW* (Jules Coleman & Scott Shapiro eds., 2002).

<sup>115</sup> See, e.g., A.W.B. SIMPSON, *LEADING CASES OF COMMON LAW* (1995).

<sup>116</sup> A.W.B. SIMPSON, *A HISTORY OF THE LAND LAW* (2d ed. 1986); A.W.B. SIMPSON, *supra* note 6; *BIOGRAPHICAL DICTIONARY OF THE COMMON LAW*, *supra* note 34.

<sup>117</sup> A.W.B. Simpson, *The Horowitz Thesis And The History of Contracts*, 46 U. CHI. L.

Stone, Christopher (Stoe-en) [University of Southern California School of Law] Meaning stone. Christopher from the Greek *Khristophoros*, meaning bearer of Christ, and in legend the patron saint of travelers. Rhetorical figure, *aenigma* or speaker of riddles. Destined by name to be impermeable and unyielding, as in "blood from a stone." Cognate also, however, with the "philosopher's stone" and thence preordained to be an esoteric philosopher of law and teacher of method. Co-author, with Bishin, of a casebook on *Law, Language and Ethics*; and author of an article titled "*Should Trees Have Standing?*"<sup>118</sup> Recently interested in the Stone Age and tribal rights to Neolithic remains. Nominally fated to police or at least watch over the points of transition between law and other disciplines, to pronounce upon the truth as between the points passed over, and to mark and irrefragably defend the boundaries thus enacted. Predestined philosophically to live out his name: should stone have standing. Thus cognate with standing stone, and milestone.

Stone, Martin (Stoned) [Cardozo School of Law] Meaning obdurate. Martin from the Latin *Martinus* with a root in *Martialis* emanating of or belonging to Mars, the god of fertility and war. Alternate etymologies derive from the German *marten* meaning market and by extension to bargain; and the French *martinet* meaning, amongst other things, non-conformist scholar. Also the name of a bird, the *martin*, a nesting creature but also a migrator, restless like the birds of the law: *aviarum iuris civilis* as they were anciently known because of their tendency to fly and flock. Rhetorical figure *praesumptio*, the anticipator or anxious one. Fated nominally to a hard path and thence the aporetic and most usually dissident existence of the scholar. Destined to the itinerant and in worldly terms impoverished or stony life of the mind. The original martinets, it might be recollected, were scholars unattached to any College: they lived between the eaves, they were homeless. The hermeneut also lives between the lines. Thus a philosopher and a lawyer whose *raison d'être* is to bargain with words, to interpret—from the Latin *inter-pretium* or to negotiate prices. He quibbles endlessly, he haggles over meaning as merchants haggle over prices. By character a migrant and in philosophical terms a militant. His first published work was an

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REV. 533 (1979).

<sup>118</sup> WILLIAM. R. BISHIN & CHRISTOPHER D. STONE, LAW, LANGUAGE, AND ETHICS (1972); CHRISTOPHER D. STONE, SHOULD TREES HAVE STANDING? AND OTHER ESSAYS ON LAW, MORALS AND THE ENVIRONMENT (1996).

essay criticizing the super-liberalism of the critical legal scholar Roberto Unger for being insufficiently radical, and ineptly critical.<sup>119</sup> In a recent work on formalism in law, Stone again criticizes the critics but leaves open for future interpretation the viability of the critique of formalism. At the end of a densely worded article of some forty pages in length, he concludes in the military style of Fabius Maximus Cunctator (the Roman general most famous for endlessly delaying any engagement with the invading Carthaginians, so much so that they eventually got exhausted and returned home) by stating: "A critical discussion remains, however, for another occasion."<sup>120</sup>

Stone, Suzanne Last (Stow-en) [Cardozo School of Law, Yeshiva University] From the Old English *stan*, meaning stone, and referring, amongst other things, to someone who lived on stony ground. Suzanne meaning lily. Last from the Middle English *lest*, referring to the wooden form used for repairing shoes; or from the German *last*, meaning burden or load. Rhetorical figure *topographia* or description of place. Destined to travel extensively, to absorb other cultures, to describe and incorporate other disciplines and places. Fated to bear the burden of alien tradition and of new forms alike. Author of *"In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory."*<sup>121</sup> In sum or in combination of her three names, stone—flower, shoe and burden—she is appositely both an exhaustive researcher, one who leaves no stone unturned, and an explorer whose travels or searches are prompted by the paucity of fertile soil in her home environment (itself an exile).

Teubner, Gunther (Toyb-ner) [University of Frankfurt] From the German *Taube* meaning dove. Often an occupational name for someone who keeps pigeons or doves and thence a nickname for someone mild and devoted to classification or pigeonholing. Gunther from the German element *gund* meaning battle and *heri* meaning army. Rhetorical figure *traductio*, the transferrer or in Puttenham's excellent lexicon "the tranlacer."<sup>122</sup> Destined to the role of mediator and transcriber between discourses and traditions.

<sup>119</sup> Martin Stone, *The Placement of Politics in Roberto Unger's Politics*, 30 REPRESENTATIONS 78 (1990).

<sup>120</sup> Martin Stone, *Formalism*, in OXFORD HANDBOOK, *supra* note 114, at 205.

<sup>121</sup> Suzanne Last Stone, *In Pursuit of the Counter-Text: The Turn To The Jewish Legal Model In Contemporary American Legal Theory*, 106 HARV. L. REV. 813 (1993).

<sup>122</sup> PUTTENHAM, *supra* note 36, at 203.



Preordained to introduce continental theories into common law. Devoted much of his career to the translation of Luhmann's theory of "autopoiesis" into legal studies.<sup>123</sup> Played with other contraries and mediated between deconstruction and autopoiesis, the art of Lorenzetti and the theory of contracts. Has written extensively on the postmodern "collision of discourses" and has managed skillfully to talk between and across traditions and discourses and thus to sooth polemical brows.<sup>124</sup>

Thomas, Kendall (Tome-mass) [Columbia Law School] From the Aramaic for twin, of biblical origin and best known as the name of one of the disciples who doubted Christ's resurrection, and hence the expression "doubting Thomas." Kendall from the Old Norse *kelda* meaning spring and *dalr* meaning valley. Rhetorical figure *aporia*, the skeptic or doubter. Destined to be unquenchably skeptical, a thinker who rethinks, questions or challenges the given histories of law and truth. Preordained to intellectual projects against convention, and so to critique. Author of "Rouge et Noir Reread";<sup>125</sup> a founder of the critical race theory movement; a postmodernist—an epistemological skeptic—and latterly a scholar and proponent of the Truth and Reconciliation Commission as an alternative or supplement to law.

Unger, Roberto (Anger) [Harvard Law School] From the German for a Magyar or someone from Hungary. Also a nickname for someone who had trading or other connections with Hungary. Alternate etymologies include the German *unruhe* meaning restless or quarrelsome person; the Medieval Latin *ungebendeus* meaning without summons; and *ungles* from the Anglo-Scandinavian meaning "wolf-kettle." Roberto from the German *hrod* meaning renown and *berht* meaning bright and latterly famous. Rhetorical figure *ecphonesis*, the figure of passionate exclamation or the outcry. The connotations of Hungary are obscure but must include a history of more wars, of a country overrun and occupied more times than any other in

<sup>123</sup> GUNTHER TEUBNER, LAW AS AN AUTOPOIETIC SYSTEM (1993).

<sup>124</sup> See Gunther Teubner, *The Two Faces of Janus: Rethinking Legal Pluralism*, 13 CARDOZO L. REV. 1443 (1992); Gunther Teubner, *De Collisione Discursuum: Communicative Rationalities in Law, Morality, and Politics*, 17 CARDOZO L. REV. 901 (1996); Gunther Teubner, *The King's Many Bodies: The Self-Deconstruction of Law's Hierarchy*, 31 LAW & SOC'Y REV. 763 (1997); GUNTHER TEUBNER, *Altera pars Audiatur: Law in the Collision of Discourses*, in LAW, SOCIETY AND ECONOMY (Richard Rawlings ed., 1997).

<sup>125</sup> KENDALL THOMAS, *Rouge et Noir Reread: A Popular Constitutional History of the Angelo Herndon Case*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995).

Europe. It should also be noted that Hotman reports that in the 1460s, Matthias Corvinus (Matthew the Crow), King of Hungary, expelled all the lawyers.<sup>126</sup> Destined to brilliant quarrelling, sudden interventions, and the formulation of surprising connections. An anti-lawyer who has intoned and preached faith in the individual, in freedom and imagination, and in direct democracy. Founding figure, some would say prophet, of critical legal studies. Ends his first book with the cry "Speak, God."<sup>127</sup> Subsequently authored the first programmatic statement of critical legal studies conceived as "deviationist doctrine."<sup>128</sup> Has gone on to rail against psychology, necessity, and extant institutions.<sup>129</sup>

Williams, Patricia (Whil-yams) [Columbia Law School] Williams from Old French *wil* meaning desire and *helm* meaning helmet. Patricia from Latin *Patrician* or of noble descent. Cognate with William Tell—meaning William tells or storyteller and soothsayer. Rhetorical figure *icon*, that of image or likeness whereby argument is built upon the most finely depicted images or likenesses of persons and things. Destined to literary nobility, to take risks, tell stories and address the vulnerability or truth of desire. Author of the *Alchemy of Race and Rights*, and of *Seeing a Color Blind Future*, Williams re-wrote late twentieth century legal theory. A founder of the critical race theory movement, Williams introduced narrative into jurisprudence and put the fiction back into legal fiction.<sup>130</sup> Writing about race and law, about ancestors who were slaves, about white colleagues who ignored race, was never likely to be entirely popular and the helmet that her name implies has often been necessary.<sup>131</sup>

Wiseman, Sir Robert (Wyse-mun) [Seventeenth century English civilian jurist] From the Middle English *wise* meaning wise, nickname for a wise or learned person. Alternate etymology from Old English *hwita* meaning white. Robert from the Germanic

<sup>126</sup> HOTMAN, ANTITRIBONIAN, *supra* note 82, at 144-45.

<sup>127</sup> ROBERTO MANGABEIRA UNGER, KNOWLEDGE & POLITICS 295 (1975).

<sup>128</sup> ROBERTO MANGABEIRA UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT (1983).

<sup>129</sup> ROBERTO MANGABEIRA UNGER, PASSION: AN ESSAY ON PERSONALITY (1984); ROBERTO MANGABEIRA UNGER, FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY (1987); ROBERTO MANGABEIRA UNGER, WHAT SHOULD LEGAL ANALYSIS BECOME? (1996), ROBERTO MANGABEIRA UNGER, DEMOCRACY REALIZED: THE PROGRESSIVE ALTERNATIVE (1998).

<sup>130</sup> PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991); PATRICIA J. WILLIAMS, SEEING A COLOR BLIND FUTURE (1997).

<sup>131</sup> For a brief accounting, see Peter Goodrich & Linda G. Mills, *The Law of White Spaces: Race, Culture and Legal Education*, 51 J. LEGAL EDUC. 15 (2001).

*hrod* meaning renown and *berht* meaning bright. Rhetorical figure *dialogismus* or the right reasoner. Twice destined for brilliance. Fated to learning, meaning a knowledge of the classics and an appreciation of Roman law. Preordained to doubt and rectify common law method. In his major work *Lex Legum* or *Law of Laws*, Wiseman lengthily impugned the wisdom and the logic of arguments from precedent.<sup>132</sup> Why repeat an error? Good question, wise man.

Yablon, Chuck (Yahb-lon) [Cardozo School of Law, Yeshiva University] From the Polish *Jablonski*, meaning apple tree and latterly referring to the trade of apple seller. Biblical connotations of the tree of knowledge which so attracted Adam and Eve. Chuck from Old English *such*, meaning tree and later stump, and thus stout individual. Rhetorical figure *asteismus* (or *urbanitas*) meaning refined and witty talk. Curious case of someone whose first and last name bear cognate if not identical meanings. Destined to scholarship and more specifically to the sharing of dangerous knowledges. A stout intellectual, meaning one who is solid in argument and resolute in defending their views. Preordained to the sharing of wicked—in the sense of brilliant and unconventional—opinions and insights. Urbane both in erudition and in delivery. Author of numerous remarkable and dangerously deconstructive articles, including: “*Forms*” (on the significance and boredom of legal forms); “*Freud as a Law Professor: An Alternative History*”; “*Stupid Lawyer Tricks*”; “*Judicial Drag*”; “*Baseball and Legal Theory*.”<sup>133</sup> A tendency to ambivalence or remorse which derives, one must suspect, from the dangers and the price sometimes paid for knowledge. The fruit, one might say, falls far from the tree.

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<sup>132</sup> SIR ROB WISEMAN, *THE LAW OF LAWS: OR, THE EXCELLENCY OF THE CIVIL LAW, ABOVE ALL OTHER HUMANE LAWS WHATSOEVER* (London, Royston 1686) (1664) (originally published as *LEX LEGUM* in 1656). This work is discussed in Peter Goodrich, *Critical Legal Studies in England: Prospective Histories*, 12 OXFORD J. LEGAL STUD. 196 (1992).

<sup>133</sup> In order of listing: Charles Yablon, *Forms*, 11 CARDOZO L. REV. 1349 (1990); Charles Yablon, *Freud as Law Professor: An Alternative History*, 16 CARDOZO L. REV. 1439 (1995); Charles Yablon, *Stupid Lawyer Tricks: An Essay on Discovery Abuse*, 96 COLUM. L. REV. 1618 (1996); Charles M. Yablon, *Judicial Drag: An Essay on Wigs, Robes and Legal Change*, 1995 WIS. L. REV. 1129; Charles Yablon, *On the Contribution of Baseball to American Legal Theory*, 104 YALE L.J. 227 (1994).

## IV. HOMILETIC CONCLUSIONS

It is far easier to elaborate etymologies than to end a listing or lexicon of names that could much more easily be endless. Once the principle of arguments drawn from the name has been canvassed it is indeed hard to prevent speculation or play upon the meaning of the nominations that we daily encounter. Sugarman will undoubtedly refer to someone who seeks to please, who sugars their phrases and adds unction to conversation and transaction. Cain will be a critic, Halley a comet or star, and Burnham an inscriber or one who brands letters, instruments or contracts. Mansfield will open new domains of law just as surely as Sunstein will shine and Slaughter will be innocent. Posner will pose or take positions, Fitzpatrick will please himself, Derrida will deride, Weir will be weird, and Vismann strong.<sup>134</sup>

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<sup>134</sup> In order of listing, the references and concise etymologies are: David Sugarman (University of Lancaster) from the German *zucker* meaning sugar. Rhetorical figure *euphemism*. Legal historian famous for his bibliographies and the extravagant length of his footnote references performing the roll call of collegiality and legitimation. Maureen Cain (University of Birmingham), topographic name for someone who collected reeds, widely used for making baskets, as well as floor and wall coverings. Maureen, from the Hebrew *Miryam*, meaning sea of bitterness or sorrow. Biblical reference to Cain who killed Abel. Rhetorical figure *epitheton* or the qualifier. A contrary in that Cain is a friend of Rick Abel. She is a sociologist of law who wrote one of the first sociologies of policing, also a leftist critic of law who has suffered significant career disadvantages by virtue of her gender and her political views. Janet Halley (Harvard University), from Old English *heah* meaning high. Also a reference to the eponymous comet. Meteoric rise. Recently moved from Stanford to Harvard. Scott Burnham (University of Montana), pronounced "burn-em", signifying the historical archetype of contract, the letter burned on the forehead, the branding of cattle, and so on. Mr K. in that he is the only professor of Contracts in Montana. Lord Mansfield (Judge 1705-1793) from *Mam* meaning breast and *feld* meaning pasture or field. Destined thus to carry the common law in his breast (*omnia scrinia habet in pectore sua*), and to open up new vistas of common law, which he duly did. Cass Sunstein (University of Chicago), from the German *sonnenschein* meaning sunshine. The most prolific author in the U.S. legal academy. Marty Slaughter (University of Kent), Old English occupational name from *slaht* meaning killing. Marty from the Aramaic for sorrowful or mistress. Author of an important book on universal languages, yet rebuffed from the U.S. legal academy. Richard Posner (University of Chicago and Judge), pronounce "pose-ner", comes up on spell-check as poser. A position taker, as witnessed by his extraordinary productivity and by his increasingly dispeptic polemics. For recent examples, see Richard A. Posner, *What Has Modern Literary Theory to Offer Law?*, 53 STAN. L. REV. 195 (2000), and RICHARD A. POSNER, *PUBLIC INTELLECTUALS: A STUDY OF DECLINE* (2001). Peter Fitzpatrick (fits-patrick), author, *inter alia*, of *MODERNISM AND THE GROUNDS OF LAW* (2001), a work of postmodern legal theory that some have found to exhibit a somewhat solipsistic relationship to language. See Tim Murphy, *Include Me Out*, 29 J.L. & SOC'Y 342 (2002). Jacques Derrida (Paris and Cardozo Law School) is interpellated by spell-check as deride, accurately signifying the intense irritation that grammatology and specifically though not necessarily accurately deconstruction has caused the legal academy. Etymologically from *ridere* to ride, which fits. Tony Weir (University of Cambridge) from the Old English Gaelic *core* meaning weir or stepping

The elaborations follow swiftly upon introduction, and the plays or interpretations can rapidly inform, amuse, rhyme and interpret the persona that nomination presents. In retrospect, armed with even a passing familiarity with etymologies, the history of a discipline and the trajectory of a career can alike be summarized by reference to the names that marked its path and signposted the directions that it took. My own career, to adopt the personal motif from which my final arguments will be drawn, was marked by just such apposite indexes or names. Consider a few incidents that are highly personal yet also wholly impersonal if one accepts that a name bears an etymological and so supra-individual meaning.

My decision to become a jurist was the result of a conversation with a professor who paradoxically confronted me, shortly before my graduation, with the question: "will you now be going through the production line of the Bar." His name was Paul Wiles, from the old English *wil* meaning contrivance or trick and later meaning trap or snare from which modern English derives the notions of wiles or ruses, of the wily and of wiliness. My predisposition to academic and specifically to political study of law had been gained slightly earlier in the seminars of a Marxist professor of legal theory, Tony Richardson. Already rehearsed, Richard comes from powerful ruler, and my teacher, who constantly averred the desirability as well as the immanence of "the revolution," instilled in me great awe for the political function and manipulations of legal rules.

That I proceeded to write a doctorate in legal theory cannot be entirely unconnected to the fact that my supervisor or dissertation adviser was named Zenon Bankowski. He was a self-professed anarchist and contrived so to confuse me as to the meaning and purpose of law as to force me into foundational or at least methodological and theoretical studies. Zenon from *xenos*, meaning stranger or other, and Bankowski from the Polish *banka* meaning "bulging vessel" could not be bettered as a nomination for someone stuffed full not of law points but of doubt and of what was back then termed "otherness" or alienation.<sup>135</sup> Is it any surprise that when I looked for guidance as to the tradition and the

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stones. Alternately from Old Saxon *wurd* meaning fate and hence the mysterious, uncanny, and odd. Author of a devastating review of a colleagues work. Cornelia Vismann (University of Frankfurt am Oder), from the Latin *vis*, meaning power, and thence powerful intellect. Author of a pioneering study of the history of filing systems, a small part of which yet to be translated masterpiece, can be found in Cornelia Vismann, *Cancels: On the Making of Law in Chanceries*, 7 LAW & CRITIQUE 131 (1996).

<sup>135</sup> I trace this history and etymology in Peter Goodrich, *Zenotypes: On the Modes of Reproduction of Critical Lawyers*, 11 SOC. & LEGAL STUD. 425 (2002).

role of theory in law, it was Neil MacCormick, discussed above, who taught me how to be a dutiful son, a follower within the tradition even while flouting it? By the same token, it is almost predicable that the Dean who first saw fit to invite me to visit a law school in the United States was called Price, from the Latin *pretium* meaning precious and thence value and interpretation, the latter word deriving from *inter-pretium* or the negotiation of meaning. Price was in nominalist terms destined to be a practitioner of hermeneutics and thus someone who would be open to appointing a scholar whose primary interests lay in linguistics, discourse analysis and semiotics—to the multiple study of signs—to a job in the legal academy. Years later when I was appointed to a Chair in the University of London to found a Law School at Birkbeck College, the Master of the College who made the appointment after the briefest of interviews was Baroness Blackstone, not so much the name of a Master as of the common law itself. When, finally, I moved from England to the United States the motive was love and the name of the scholar who turned me around amorously, geographically and theoretically was Linda Mills, a name which in one etymology implies to turn by means of love.

The ripple effect of nomination or of the meaning of names returns us to the question of the normative significance of naming. According to the Accursian gloss adverted to earlier—that the name inheres in the bones—the Western legal tradition, from antiquity onwards, was in no doubt that the name both legislated a status and inscribed the obligation to live up to that inscription. The name, like the letter, was in origin a branding, a contract and so a structure. The name Accursius, delightfully enough, derives from the Latin *accursus*, meaning to aid and to run up or to and fro, with cognate forms of *curso*, *cursus* and *cursor*, to run to and fro, to weave between, and thence to the modern *cursor* or text marker and cursive or written by hand into the text. All of which is to say that nomination destined Accursius to be a glossator or interweaver of texts and his *Glossa Ordinaria* was appropriately enough both the standard-setting gloss on the *Digest* and also the source of the specific gloss that in doctrinal terms legitimates this *Dictionary*.

That the name Accursius should mean glossator and that the man who most famously inhabited that name should be not simply a glossator but the most famous and arguably the best of all of the glossators is a telling instance of the thesis that this *Dictionary* propounds. That Accursius should be the source of the gloss which defines the name as an obligation both illustrates and



instantiates the point that is argued here. The name is significant and particularly for lawyers that truism should not be dismissed or set aside. We are as a legal culture contemporarily in the habit of ignoring the history and the dictate or purchase of names. This seems upon reflection and almost immediately self-defeating and a form of denial. We are surrounded by names, by the circulation of names, by a media and a star system, by a market and economy, in which names bear reputations and values that determine both trust and credibility and yet we somehow also contrive to believe that names are irrelevant, that names are personal and not a fit matter of discussion or argument.

The Accursian gloss and this laconic *Dictionary* can perhaps form the basis of a contrary argument. Our ignorance or even fear of making arguments from names reflects a neglect of rhetoric in the public sphere and the subordination of the individual or the orator to corporate causes or bureaucratic demands. In professional discourse this expropriation of the singular, of the name, usually takes the form of announcing the priority of scientific method and the precedence of "truth" or objectivity over the subjective and merely nominal. It is believed that the name is personal and any argument derived from or supported by the name is an impermissible form of *ad hominem* reasoning that traduces the universal in favor of the particular, and specifically the private idiosyncrasy of the subject. The *ad hominem* argument is in this view to be conceived as extrinsic to the public sphere of knowledge and is frequently also deemed vindictive, vengeful, improper, immoral and cruel. Two refutations, one cultural and one theoretical, will serve as a conclusion.

The distinction between public and private, between the permissible and the unspeakable or hidden, has been erased or redrafted in most of the social sciences as well as in the experiences of our everyday lives.<sup>136</sup> Personal archives, biographical writings, conceptions of counter public and even intimate public spheres are commonplaces within the majority of contemporary inter-disciplines. Feminism and queer theory have made short shrift both of the concept of a discrete and hermetic private sphere and of the notion that in the gynaeceum, or the realm of the personal, knowledge somehow gives way to fantasy, thought to idiocy, and truth to lies. Public and private spheres now mix and shift their boundaries in temporary and local ways. The public is in the private and the intimate is constantly acted out in

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<sup>136</sup> On the complexity of this issue, see MICHAEL WARNER, *PUBLICS AND COUNTERPUBLICS* (2002). See also the excellent essays collected in *INTIMACY* (Lauren Berlant ed., 2000).

the market, in the media, and in the political realms. All of which is to say that the boundaries neither hold up nor make sense. The distinction between public and private neither any longer meaningfully protects privacy nor does it salvage a lost legitimacy for the public sphere.

There is no avoiding the intimacy of encounters or the names of those encountered. Be it in the domain of law or of literature opinions will circulate and arguments will be made in relation to names and those that they nominate: reputations will be formed, criticisms formulated, and polemics engaged. Presently professional etiquette favors hiding or denying the *ad hominem* character of the arguments we draw from or direct towards names. We tend to be less than honest as to the feelings that motivate and circumscribe our professional judgments and decisions. We deny their intimacy, their historical and biographical contours. Without developing that observation here, it can simply be pointed out by way of a second refutation that the name is the exemplary form of the combination or imbrication of public and private, intimate and economic.

The name is precisely a sign of the personal and intimate in its most public and supra-personal or objective manifestation. The name is personal and singular yet also infinitely old, wholly exterior, and quite impersonal. Turning to the phone book or the web, I find, and at times to my chagrin, any number of further instances of Peter Goodrich: I am not alone, I am not unique, I even share my names, personal and familial, with numerous other Peter Goodriches, let alone with the vast host of the eponymous dead. Which means ultimately that to own my name is precisely to make arguments about it and to draw meanings from it. For the name to inhere in the bones requires that the name be embodied and expressed. Far from being unique in the senses adverted to earlier in terms of the antique division between public and private, the name is nothing or it is an argument. Those who have succeeded in the sense either of distinction or of passion are those who have lived out their names, which is to say they have made something of them and at best turned them into arguments.

Freedom in one definition is the choice of necessity. Our relationship to our name—to our family, our lineage, our self—is just such a choice, an adaptation or confrontation with a structure, an accounting of unconscious and excessive forces. To play with names, to argue from names, to find meaning in names, is a sadly neglected rhetorical or persuasive pursuit. We encounter it most often in the everyday in the flippant mode of punning (classically *paronomasia* or play upon words). Placentinus, from placenta, is

at the beginning. Duck, meaning zero, counts for nothing. Selden is seldom read. Dicey is not to be trusted. Fortescue, loosely strongly askew, gets things strongly wrong. Hooker is promiscuous. Holmes looks for clues. Locke holds the key, and Mills (in this instance John Stuart) grinds on. In more contemporary nominations, Calabresi calibrates; Farmer tills or more archaically husbands; Habermas holds masses; Rawls is a plug; Fletcher fires arrows; Mootz holds questionable opinions; Peller rolls; Butler writes about what she saw; Twining is confused; and Finnis is a Latinist and obsessed with ends to boot.<sup>137</sup> In the same vein Post sends things on; Handler is well composed; Gross is noticeable; J.C. Smith is *vicarius Dei*; Kramer is full of facts; Fish is slippery; Carty will work hard; Scheck is on the money; Pottage makes a diaphanous soup of words; Winter (in the Western Hemisphere) will be dark and cold, and so on into the infinite future.<sup>138</sup> Such lucid phonetic and semantic plays, as Freud pointed out at length, have a close proximity to underlying or unconscious structures and causes.<sup>139</sup> We encounter them as a residual poetry in everyday life, as good or bad arguments, as aesthetic or poor expressions of taste. We encounter them in analysis as signs or symptoms of untended causes.

The epistemic impropriety or social immoralism of the pun again draws its strength from the historical division between public and private, and here the largely coincident distinction between gravity and levity. The pun is not necessarily the only or the best argument from a name but it is nonetheless one such, meaning both an argument and a play upon real signs. When analysis moves from the everyday of punning to the scholarly and rhetorical roles of etymologies it becomes even harder to ignore the significance of names. The hygienic distinction between word and referent, the linguistics that claims that the referent determines the word, that the word or name is but a transparent cipher, has collapsed long ago in linguistics. The words we use are the words we use. Our discourse carries meanings that are social,

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<sup>137</sup> John Finnis (University of Oxford and Notre Dame), Catholic theologian of law, opposed to abortion and to euthanasia. Finnis is most famous for a book that takes the antique theology of natural law seriously—law is defined by its natural or God given ends. Deserves his own entry but space is limited. Finnis being an alternate spelling of the Latin *finis* meaning boundary or end. Author of JOHN FINNIS, NATURAL LAW AND NATURAL RIGHT (1980). His work has been brilliantly excoriated in C. Douzinas & R. Warrington, *On the Deconstruction of Jurisprudence: Fin(n)is Philosophiae*, 14 J. L. & SOC'Y 33 (1987).

<sup>138</sup> For references to these names, see ASS'N OF AM. L. SCH., THE AALS DIRECTORY OF LAW TEACHERS: 2001-2002 (2001); SOC'Y OF LEGAL SCHOLARS, DIRECTORY OF MEMBERS (2002).

<sup>139</sup> SIGMUND FREUD, JOKES AND THEIR RELATION TO THE UNCONSCIOUS (James Strachy trans., 1960).

exterior, and independent of intent or inner authorial truth. So too we may bear our name but we are also carried by it. Put it like this, if the name of an interlocutor is of no interest to you, then that is a bad sign for them as well as a bad sign for you. Where Renaissance orators were wont to state that "he is half hanged, that has an evil name,"<sup>140</sup> we might wish to offer a more optimistic or media friendly version of the same thesis: "a good name is the first step on the path to fame."

<sup>140</sup> WILSON, *supra* note 9, at sig. 48v.